



## ESR COMPARISON RELEVANT ACTIVITY GUIDANCE

	Previous ESR & R/A Guidance	Current ESR & R/A Guidance
<b>Definition of Licensee</b>	“Natural” or “Juridical” person licensed by the competent licensing authority/ authorities in the UAE to carry out a Relevant Activity in the UAE, including a Free Zone and a Financial Free Zone.	<b>“Natural” person has been excluded; “Juridical” person specified.</b> A juridical person (incorporated inside or outside the UAE); or Unincorporated Partnership; registered in the UAE, including a Free Zone and a Financial Free Zone and carries on a Relevant Activity.
<b>Definition of Connected Persons</b>	A natural or juridical person who is related to one or more natural or juridical person(s) through direct or indirect ownership or control, or common control.	<b>Definition simplified.</b> An entity that is a part of same Group as the Licensee or Exempted Licensee.
<b>Federal Tax Authority (FTA)</b>	Not introduced	<b>FTA appointed as the ‘National Assessing Authority’</b> with following functions: <ol style="list-style-type: none"> <li>1. undertake assessments to determine whether a Licensee or Exempted Licensee has met the Economic Substance Test;</li> <li>2. impose administrative penalties;</li> <li>3. hear and decide on appeals;</li> <li>4. carry out reporting requirements;</li> <li>5. exercise any other powers or functions as required to implement ESR Resolution.</li> </ol>
<b>Definition of Parent Company</b>	No definition provided	<b>Control-/influence- based Definition introduced.</b> I.e. entity that directly: <ol style="list-style-type: none"> <li>1. <b>holds majority of voting rights</b> in Licensee or Exempted Licensee; <b>or</b></li> <li>2. has <b>right to appoint or remove majority of the board</b> of directors of Licensee or Exempted Licensee; <b>or</b></li> <li>3. <b>controls</b> alone or pursuant to joint arrangement with other shareholders/, <b>majority of voting rights</b> in Licensee or Exempted Licensee; <b>or</b></li> <li>4. has right to exercise, or actually exercise, <b>dominant direct influence or control</b> over Licensee or Exempted Licensee.</li> </ol>
<b>Definition of Ultimate Parent Company</b>	No definition provided	<b>Definition introduced.</b> Entity of a Group that: <ol style="list-style-type: none"> <li>1. owns directly or indirectly a sufficient interest in Licensee or Exempted Licensee such that it is required to prepare Consolidated Financial Statements under applicable accounting standards or would be so required if equity interests were traded on a public securities exchange in jurisdiction of tax residence; <b>and</b></li> <li>2. no other entity in the Group owns directly or indirectly sufficient interest in such entity such that it is required to prepare Consolidated Financial Statements under applicable accounting standards, or would be so required if equity interests were traded on a public securities exchange in jurisdiction of tax residence.</li> </ol>



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<b>Definition of Group</b>	No definition provided	<b>Definition introduced.</b> Two or more entities related through ownership or control such that they are required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting standards.
<b>Definition of MNE Group</b>	No definition provided	<b>Definition introduced.</b> Any Group that includes: <ol style="list-style-type: none"> <li>two or more entities that tax residence of which is in different jurisdictions; or</li> <li>entity that is resident for tax purposes in one jurisdiction and subject to tax, with respect to the activities carried out through branch or permanent establishment, in another jurisdiction.</li> </ol>
<b>Branches of foreign entities vis-à-vis ESR</b>	No information provided	<b>Status clarified.</b> A Branch of foreign entity that carries out a Relevant Activity and receives Relevant Income is <b>required to comply</b> with ESR, <b>unless</b> Relevant Income is subject to tax in a jurisdiction outside UAE.
<b>Branches of local entities vis-à-vis ESR</b>	No information provided	<b>Status clarified.</b> A “ <b>parent</b> ” or “ <b>head office</b> ” registered in the UAE <b>must file</b> as single Licensee, reporting the Relevant Activities of itself and all its branches in <b>one composite Notification</b> and/or Economic Substance Report.
<b>Definition of Exempted Licensees</b>	Not introduced	<b>Definition introduced:</b> <ol style="list-style-type: none"> <li>Investment Fund and its underlying SPVs / investment holding entities;</li> <li>Entity that is tax resident in a jurisdiction other than the UAE;</li> <li>Entity wholly owned by UAE residents and meeting following conditions: (i) entity is not part of a MNE Group; and (ii) all of entity's activities are only carried out in the UAE;</li> <li>Licensee that is a branch of foreign entity the Relevant Income of which is subject to tax in a jurisdiction other than the UAE.</li> </ol>
<b>Evidencing status as an Exempted Licensee</b>	Not introduced	<b>Definition introduced.</b> Any entity which claims to be Exempted Licensee must submit to the relevant Regulatory Authority, along with a Notification, sufficient evidence substantiating its status as Exempted Licensee for each Financial Year in which it claims to be Exempted Licensee - e.g. a Tax Residence Certificate or other types of proofs. On failure to provide such evidences, entity will have to meet the Economic Substance Test for each financial year in which such failure occurs and will be treated on par with Licensee.



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<b>Definition of Relevant Income</b>	No definition provided	<b>Definition introduced.</b> “Relevant Income” means all of that entity’s gross income from a Relevant Activity as recorded in its books and records under applicable accounting standards, whether earned in the UAE or outside the UAE and irrespective of whether entity has derived a profit or loss from its activities.
<b>Liquidation or otherwise ceasing to carry on Relevant Activities</b>	No information provided	<b>Clarifications provided.</b> Where an entity carries out a Relevant Activity during the course of a liquidation or winding up process, the entity, its liquidators (or equivalent) must ensure that entity continues to satisfy all its obligations under the ESR Regulations. If an entity is in liquidation or being wound up, it must continue to satisfy the Economic Substance Test for any period during which it carries on a Relevant Activity and derives Relevant Income.
<b>Outsourcing activities other than CIGAs</b>	No information provided	<b>Clarifications provided.</b> Licensee may outsource activities <u>which are not CIGAs</u> to outside the UAE, e.g. outsourcing of back office functions, IT, payroll, legal services, or other expert professional advice or specialist services provided.
<b>Outsourcing CIGA</b>	No detailed information provided	<b>Clarifications provided.</b> Licensee must be able to provide precise details of level of resources employed by the outsourcing provider: e.g. by means of timesheets. Service Agreement to contain information related to employee, expenditures and premises of outsourcing provider.
<b>Board Meetings</b>	Minimum of 1 Board Meeting per Financial Year.	<b>Clarifications provided and recording obligations introduced.</b> No “minimum” provided; Minutes of Board meetings must <b><u>record all strategic decisions taken in relation to Relevant Activity being undertaken</u></b> by entity.  <b>Board Members</b> not required to be UAE residents but are <b>required to be physically present in the UAE when taking the decisions.</b>
<b>New deadline for submission of ESR Notification by Licensee and Exempted Licensee</b>	Not introduced	<b>Deadline introduced and clarifications provided.</b> 6 months from end of Licensee’s or Exempted Licensee’s end of Financial Year. Licensees that have already submitted their Notification directly to their Regulatory Authority <b><u>will have to re-submit via the Ministry of Finance Portal once available.</u></b>
<b>Deadline for submission of Economic Substance Report</b>	12 months from the end of the Licensee’s FY	<b>Clarifications provided.</b> 12 months from end of Licensee’s Financial Year via Ministry of Finance Portal.




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<b>Content of the Economic Substance Report</b>	No information provided	<p><b>Clarifications provided.</b> Economic Substance Report must contain following information:</p> <ol style="list-style-type: none"> <li>1. Type of Relevant Activity conducted by it;</li> <li>2. Amount and type of Relevant Income earned by it;</li> <li>3. Amount and type of operating expenses and assets in respect of Relevant Activity carried out by it;</li> <li>4. Location of place of its business and, if applicable, plant, property or equipment used for Relevant Activity by it in the UAE;</li> <li>5. Number of full-time employees with qualifications and number of personnel who are responsible for carrying on its Relevant Activity;</li> <li>6. Core Income-Generating Activity in respect of Relevant Activity being carried out by it;</li> <li>7. Its financial statements;</li> <li>8. Declaration as to whether or not it satisfies the Economic Substance Test;</li> <li>9. In the case of Relevant Activity being an Intellectual Property Business, declaration as to whether or not it is a High-Risk IP Licensee</li> </ol>
<b>Retention of Information and Records</b>	No information provided	<p><b>Clarifications provided and recording obligations introduced.</b> Each Licensee and Exempted Licensee must retain all relevant documents, records and information required by Licensee to meet ESR requirements for a period of 6 years from end of relevant Financial Year. All docs must be kept in English.</p>
<b>Definition of Holding Company Business</b>	<p>A business that is:</p> <ol style="list-style-type: none"> <li>a. a Holding Company in accordance with the law applicable to the Licensee carrying out such activity in the State.</li> <li>b. has as its primary function the acquisition and holding of shares or equitable interests in other companies.</li> <li>c. does not carry on any other commercial activity.</li> </ol>	<p><b>Definition introduced.</b> Business that:</p> <ol style="list-style-type: none"> <li>1. has as its <b>sole</b> function acquisition and holding of shares or equitable interests in other companies;</li> <li>2. <b><u>only earns dividends and capital gains from its equitable interests.</u></b></li> </ol> <p><b>Caveat provided:</b> Real estate assets owned by the Licensee that are solely used for purposes of its Holding Company Business will not prevent such Licensee from being considered as carrying on a Holding Company Business.</p>



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<b>IP Business</b>	No information provided	<p><b>Flexibility on CIGA added.</b></p> <p>In exceptional circumstances, a Licensee that owns a marketing intangible, patent or similar asset (<u>and is not considered a High-Risk IP Licensee</u>) and that does not undertake any relevant CIGAs mentioned in Relevant Activity Guide, may be able to consider any of the following activities as CIGAs for Economic Substance purposes:</p> <ol style="list-style-type: none"> <li>1. taking strategic decisions and managing (as well as bearing) principal risks related to development and subsequent exploitation of Intellectual Property Asset;</li> <li>2. taking strategic decisions and managing (as well as bearing) principal risks relating to acquisition by third parties and subsequent exploitation and protection of Intellectual Property Asset;</li> <li>3. carrying on ancillary trading activities through which Intellectual Property Assets are exploited leading to generation of revenue from third parties.</li> </ol>
<b>Definition of High-Risk IP licensee</b>	<p>A Licensee which carries on an Intellectual Property Business and in respect of which any of the following two conditions apply:</p> <ol style="list-style-type: none"> <li>a. the Licensee:             <ol style="list-style-type: none"> <li>i. did not create the intellectual property in an intellectual property asset which it holds for the purposes of its business.</li> <li>ii. acquired the intellectual property asset either from: (a) a Connected Person; or (b) in consideration for funding research and development by another person situated in a country other than the State.</li> <li>iii. Licences the intellectual property asset to one or more Connected Persons or otherwise generates income from the asset in consequence of activities performed by Foreign Connected Persons.</li> </ol> </li> <li>b. the Licensee does not carry out research and development, or branding, marketing and distribution as part of its State Core Income-Generating Activity.</li> </ol>	<p><b>Definition simplified.</b></p> <p>Licensee which carries on an Intellectual Property Business and Licensee:</p> <ol style="list-style-type: none"> <li>1. did not create intellectual property in an Intellectual Property Asset which it holds for purpose of its business;</li> <li>2. acquired Intellectual Property Asset either from:             <ol style="list-style-type: none"> <li>a. Connected Person; or</li> <li>b. in consideration for funding research and development by another person situated in a country other than the UAE;</li> </ol> </li> </ol> <p><b>and</b></p> <ol style="list-style-type: none"> <li>3. licenses or has sold Intellectual property Asset to one or more Connected Persons, or otherwise earns separately identifiable income from Foreign connected Person in respect of use or exploitation of Intellectual Property Asset.</li> </ol>
<b>Distribution and Service Centre Business</b>	<ol style="list-style-type: none"> <li>a. purchasing from a Foreign Connected Person and importing and storing in the State: component parts or materials for goods; or goods ready for sale, and reselling such component parts, materials or goods outside the State.</li> <li>b. providing services to Foreign Connected Persons in connection with a business outside the State</li> </ol>	<p><b>Definition expanded:</b></p> <ol style="list-style-type: none"> <li>a. purchasing from Foreign Connected Person component parts or materials for goods; or goods ready for sale, and reselling such component parts, materials or goods; or</li> <li>b. providing services to Foreign Connected Persons.</li> </ol> <p><b>* No requirement for goods to be imported and stored in the UAE.</b></p> <p><b>* No requirement for services to be provided in connection with business outside the UAE</b></p>



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<b>Penalty</b>	<p>Not meeting the Economic Substance Test (EST): from AED 10,000 to AED 50,000</p> <p>Not meeting EST (Consecutive financial period): from 50,000 to AED 300,000</p> <p>Not submitting EST or providing inaccurate Info: from AED 10,000 to AED 50,000</p>	<p><b>List amended.</b></p> <p>Not submitting notification: AED 20,000</p> <p>Not meeting EST: AED 50,000</p> <p>Not meeting EST (Consecutive financial period): AED 400,000</p> <p>Not submitting EST or providing inaccurate info: AED 50,000</p>
<b>Period for Imposition of Penalties</b>	Six years	Six years in general Fraud or misrepresentation cases: limitation not applicable



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**UAE ESR Update: Issuance of Cabinet of Ministers issued Resolution No. 57 of 2020 and Ministerial Decision 100 of 2020**

On 10th and 19th August 2020 respectively, the Ministry of Finance issued Resolution No. 57

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We are a multi-services platform catering to a broad spectrum of clients – from individual entrepreneurs and local SMEs to wealthy international families, to established blue-chip companies and multinationals. Our one-stop-shop offering is unique in the Middle East: a holistic and cross-disciplinary combination of a market-leading corporate services firm, a law firm’s specialist expertise and a regulatory & compliance services practice, all through one single platform.

We have broad experience in facilitating entry-to-market for businesses across all major fields of activities. We have a one-of-a-kind practical expertise understanding and handling complex corporate structures.

Headquartered in the UAE, we are an entrepreneurial firm for entrepreneurial clients.

**Who will assist you**



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