



ECONOMIC SUBSTANCE REGULATIONS FAQ



1. Why has the UAE introduced Economic Substance Regulations?

The UAE introduced Economic Substance Regulations to honour the UAE's commitment as a member of the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS), and in response to a review of the UAE tax framework by the EU which resulted in the UAE being included on the EU list of non-cooperative jurisdictions for tax purposes (EU Blacklist). The issuance of the Economic Substance Regulations on 30 April 2019, and the release of Guidance on the application of the Regulations on 11 September 2019, was a requirement for the removal of the UAE from the EU Blacklist on 10 October 2019. In consultation with the OECD and the EU, amendments to the Regulations were made by Cabinet of Ministers Resolution No. (57) of 2020 on 10 August 2020 (the Regulations), and updated Guidance was issued on 10 August 2020 (Ministerial Decision No. (100) of 2020). The Regulations ensure that UAE entities that undertake certain activities (Licensees - see Question [5]) are not used to artificially attract profits that are not commensurate with the economic activity undertaken in the UAE.

2. When do the Regulations enter into force?

The Regulations are effective from 1 January 2019, and 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.

3. Who is the "National Assessing Authority"?

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

4. 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 An explanation and examples of each activity can be found on the relevant activities guide

5. 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

6. 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 subject to tax in the jurisdiction of the foreign parent / head office. This would require the foreign company to report the Relevant Income of the UAE branch in its corporate tax return, 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.

7. 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. 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.

8. 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.

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

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

10. 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.

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

This assessment needs to be done for each financial period starting on or after 1 January 2019, and should take into account the activities undertaken by the Licensee at any time throughout the relevant financial period.

12. 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 updated Guidance for more information.

13. 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 with its Regulatory Authority or submit an Economic Substance Report for the relevant financial period.

14. 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 not required to meet the Economic Substance Test or file an Economic Substance Report for that period. However, the Licensee would still need to submit a Notification with its Regulatory Authority.

15. 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.

16. 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 and Guidance 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, recognising that the type and level of activity of a Licensee may fluctuate during the course of a financial period and from year to year.

17. 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.

18. Does a Licensee need to hold board meetings in the UAE?

Yes, an adequate number of board meetings 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.

19. 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.

20. Do the directors of the Licensee need to be resident in the UAE?

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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

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

Activities that are not CIGAs (e.g. back office functions) 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.

27. 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).

28. 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.

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

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

30. 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

31. 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: ○ licences 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

32. 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 meets the increased substance requirements. The increased substance requirements (in addition to those set out under Question [5]) 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

33. 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).

34. 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, and 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.

35. 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.

36. 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.

37. 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 favour of the lender would not constitute consideration.

38. 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.

39. 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.

40. 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.

41. Who needs to submit a Notification by the 30 June 2020 deadline?

Only Licensees and Exempt 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) with a financial year commencing on or after 1 January 2019 and ending on or before 31 December 2019 are required to submit a Notification by 30 June 2020.

42. When should a business with a financial year that ends after 31 December 2019 (e.g. a financial year ending 31 March 2020 or 30 June 2020) submit a Notification?

Whilst certain Regulatory Authorities may allow or request Licensees to file a Notification for financial periods ending after 31 December 2019 (for example, 31 March 2020 or 30 June 2020) by 30 June 2020, this is not a requirement under the Economic Substance Regulations. The statutory deadline for periods ending after 31 December 2019 will be communicated in due course. No Economic Substance administrative penalties will apply to businesses with a reportable period ending after 31 December 2019 for Notifications not submitted by 30 June 2020.

43. 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.

44. 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 10k to 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

45. 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.