



ECONOMIC SUBSTANCE REGULATIONS IN UAE





Transparency has been high on government agendas since the global financial crisis and this has resulted in the introduction of a number of tax transparency and anti-avoidance measures across the world.

The adoption of Organization for Economic Cooperation and Development (OECD) Common Reporting Standard (CRS) introduced automatic exchange of tax and financial information on a global level. This was a game-changer, providing for the international exchange of account holder information and introducing a new level of transparency.

The OECD then turned its attention to combatting Base Erosion and Profit Shifting (BEPS) – multinational enterprises exploiting gaps and mismatches between different countries’ tax systems to ‘shift’ profits from higher-tax jurisdictions to lower-tax jurisdictions and thereby ‘eroding’ the tax bases of higher-tax jurisdictions.

In April 2019, the UAE issued the following legislation to introduce Economic Substance Regulations (ESR) to comply with OECD’s BEPS Action plan and tax reporting framework of European Council (EU).

- ❖ UAE Cabinet Resolution No. 31/2019, as amended, concerning economic substance regulations in the UAE;
- ❖ guidance released by the Ministry of Finance pursuant to Ministerial Decision No. 215/2019; and
- ❖ Cabinet Resolution No. 58/2019, which designates the appropriate UAE authorities to regulate compliance under these regulations.

INTRODUCTION TO ECONOMIC SUBSTANCE REGULATIONS (ESR)



OBJECTIVE & RELEVANT ACTIVITIES OF ESR

The primary purpose of the Economic Substance Regulations (ESR) is to ensure that the entities which undertake relevant activities are not used to artificially **attract or shift profits** that are not proportionate to the economic activity undertaken in the UAE by setting up the criteria that confirm that the Licensee is carrying out an activity in the UAE that achieves economic substance interest.

Who are subject to the Economic Substance Regulations?

The Economic Substance Regulations apply to all UAE Companies including onshore and free zone companies, branches, foundations, non-profit organizations and partnerships (referred to as "**Licensees**") that carry out one or more of the following "Relevant Activities" in the UAE:

- ❖ Banking businesses;
- ❖ Insurance businesses;
- ❖ Investment fund management businesses;
- ❖ Lease-finance businesses;
- ❖ Shipping businesses;
- ❖ Headquarters businesses;
- ❖ Holding company businesses;
- ❖ Intellectual property businesses; and
- ❖ Distribution and service center businesses.

We will be sharing with you separately the **ESR Relevant Activities Guide** to cover the scope and application of the Regulations and provide additional guidance on 'Relevant Activities' and their associated "Core Income-Generating Activities" ("CIGAs").



COMPLIANCE TO ESR

What is required under the Economic Substance Regulations?

Every Licensee which carries out one or more of the Relevant Activities must submit a Notification to the respective regulatory authority as set out in the Economic Substance Regulations.

In addition, for every financial period, any Licensee that carries out one or more of the Relevant Activities and derives income from the Relevant Activity in the UAE will be required to satisfy an "Economic Substance Test" and submit an economic substance report with the appropriate regulatory authority within 12 months from the end of the relevant financial period. An exemption applies to companies that are at least 51% directly or indirectly owned by the Federal or an Emirate government or a UAE-based government body or authority.

The appropriate regulatory authority varies depending on the type of Relevant Activity and the location in which it is undertaken. Each regulatory authority will set out the form of the reports to be filed and the mechanisms for submitting such forms.

What is the Economic substance Test?

All companies with activities and income generated in a relevant sector will be required to demonstrate that they have adequate substance in the UAE. The adequate substance requirements will generally require to demonstrate that a company is directed and managed in the UAE, has an adequate physical presence in the UAE, the core income generating activities and any value addition to its functionality are being conducted within the UAE.



HOW CAN HEXAGON ASSIST

How can Hexagon assist you?

We can assist you in this regulatory self-assessment to fulfill your compliance with legal responsibilities by:

- ❖ to get a clear view of the new regulations and your entity's categorization
- ❖ reviewing internal corporate governance, Management information system and ESR criteria fulfillment
- ❖ identifying Shareholding pattern of the company, Foreign Connected Persons, Relevant Activity, Income generated from such relevant activity and whether this income is taxed anywhere Outside the UAE.
- ❖ enables you to implement the most effective compliant (implementing contractual and delegation arrangements) strategy to help you pass the economic substance test
- ❖ Providing you with corporate secretarial services and fulfilling your needs at the light of the new regulations.

Due date for Filing ESR Notification and Key Considerations

According to an article in the press, the Undersecretary of the Ministry of Finance has confirmed that the cut-off date for filing the notification to the Ministry of Finance is **30 June 2020**, and that this is what has been communicated to the relevant regulatory authorities.

The Companies should analyze whether their activities fall within the scope of any Relevant Activities and, if appropriate, be prepared to file notifications in such form, manner and timing set forth by their respective regulatory authorities. It should be noted that some free zone authorities are requiring all Licensees registered in their jurisdiction, including those who do not undertake a Relevant Activity, to submit an economic substance notification.

OUR CORE TEAM



DILIP PATEL

CEO, Hexagon Advisory

Dilip is specialized in advising clients on estate planning, double taxation treaty arrangements and creating legal agreements to facilitate the corporate structures that suit various needs, ranging from asset protection & control, asset confidentiality and cross border transactions.



KUNAL PATEL

Director, Hexagon Advisory

Kunal is specialized in corporate structuring and double taxation avoidance arrangements in place with off-shore jurisdictions ranging from asset protection & control, asset confidentiality, fund flow planning, equities and trade finance.



SUBIN BEN

Senior Corporate Advisor , Hexagon Advisory

Subin is specialized in assisting clients with strategic advise on a host of corporate and individual needs, spanning company formations (locally and internationally) including company management and compliance services .



OTHER SERVICES

Other Services offered by Hexagon

Hexagon Advisory Ltd is an independent advisory firm specializing in servicing clients who are looking for personalized relationship, high-quality services and optimum performance.

With over 30 years of experience we offer strategic advice on a host of corporate and individual needs.

The bulk of our initiatives are centered on assisting business houses/ family run businesses from across the globe with their transaction needs including asset protection and secrecy.

Having joined forces with an extensive global network of attorneys, accountants, bankers, brokerage houses including financial & corporate advisors of international repute, permits us to provide a comprehensive set of solutions to meet client needs.

Business Advisory	Corporate & Transaction Structuring	Off-Shore Company Formation
International Tax Planning	UAE Company Formation	Investment Advisory
On Shore & Off Shore Banking Services	Trade Finance	Trusts & Foundations
Corporate Management Services	Lobbying Service	Trade Facilitation

Associate Companies

STA being a law firm in Dubai, having 60 dedicated employees of whom 30 are qualified lawyers, focus on providing legal and strategic advice on all forms of corporate, commercial and business matters, intellectual property, franchising,, insolvency and restructuring including M&A advisory across construction, real estate law, health care, energy and natural resources.

Established in the 1997, Careerline Middle East, is a professional placement agency firm in the UAE providing Executive search, Head hunting and Overseas man power recruitment services. Careerline has associate offices worldwide in over 20 countries to assist clients to identifying and selecting the right talent.

DNK Accountants headquartered in Dubai, UAE, is a professionally managed advisory firm, providing services ranging from audit assurance services, company formation, corporate management services and strategy business consultancy. The Principals and Directors are committed to the success of the business and ensuring that each client receives a genuinely individual customized service according to their needs.

N R Doshi and Partners (“NRD”), an audit and assurance firm with over 25 years presence, is a member firm of DFK International, London. NRD has 60+ employees of whom 40 are qualified accountants.



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