

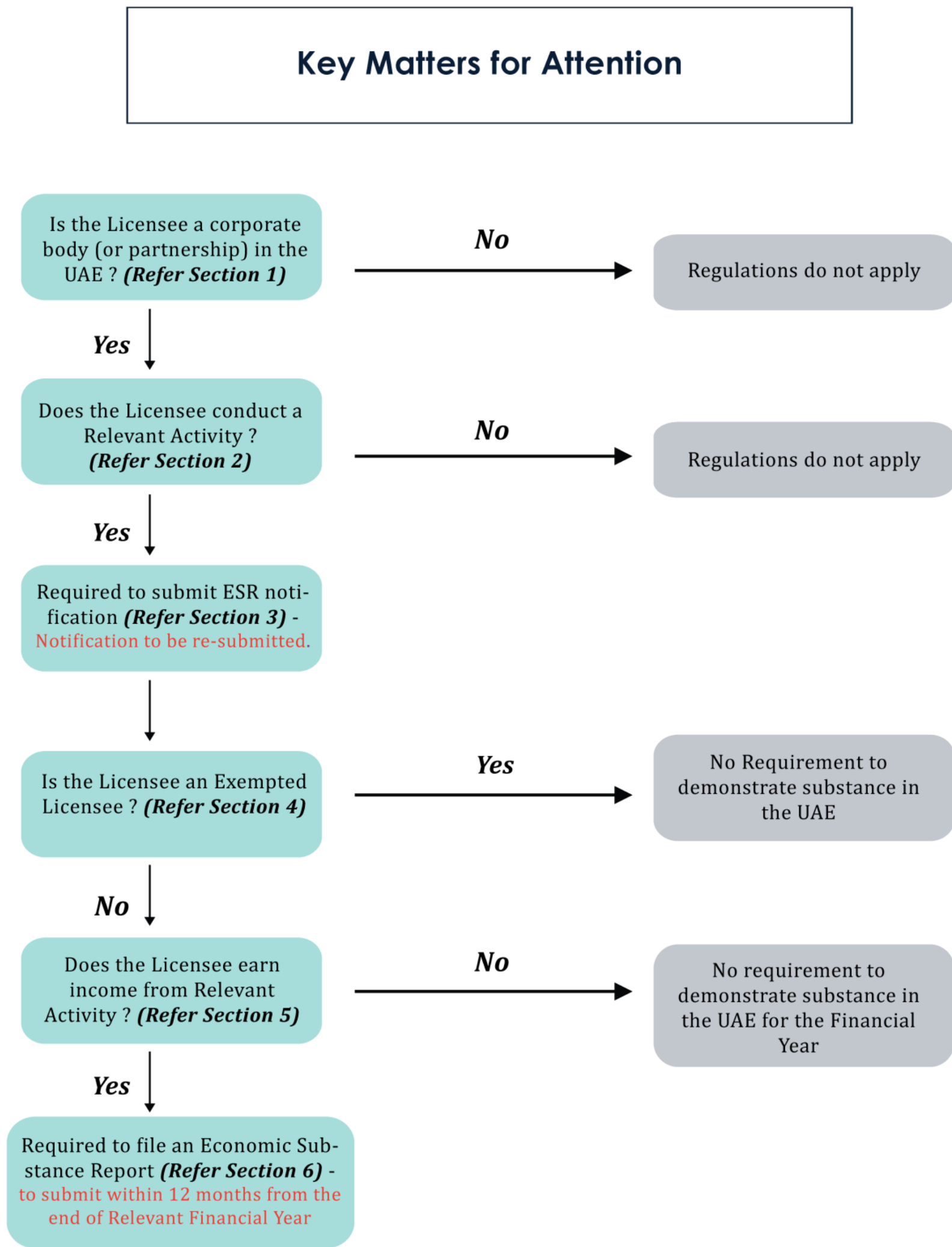
Economic Substance Requirements

United Arab Emirates

(Cabinet of Ministers Resolution No. 57 of 2020
and Ministerial Decision No . 100 for the year 2020)



Key Matters for Attention



Applicability of ESR Notification and Reporting based on different Licensees

Sl. No.	Scenario	Nature of the Licensee	ESR Notification Applicability	ESR Reporting Applicability, only if relevant income is generated
1	Licensee (body corporate or partnership) carrying out Relevant Activity during the Financial Year	Licensee	Yes	Yes
2	Licensee that is a tax resident outside UAE carrying out Relevant Activity during the Financial Year	Exempted Licensee	Yes	No
3	Licensee that have head office in UAE and branch/branches in UAE carrying out Relevant Activity during the Financial Year	Licensee (only head office combining the figures of the branches)	Yes	Yes
4	Licensee that have head office in UAE and branch outside UAE both carrying out Relevant Activity during the Financial Year	a) Licensee that is head office is covered under ESR b) The head office in the UAE is not required to consolidate the activities and income of the foreign branch for purposes of the ESR Regulations, provided that the Relevant Income of the foreign branch is subject to tax in the foreign jurisdiction where the branch is located.	Yes	Yes
5	Licensee that is a branch in the UAE of a foreign entity	a) If the Relevant Income of the Licensee is subject to tax in a jurisdiction other than the State (UAE) - Exempted Licensee. b) If the Relevant Income of the Licensee is not subject to tax in a jurisdiction other than the State (UAE) - Licensee.	Yes Yes	No Yes
6	Licensee is an entity wholly owned by UAE residents ("UAE residents" means UAE citizens and individuals holding a valid UAE residency permit, who reside in the UAE) And meets all of the following conditions: (i) the entity is not part of a MNE Group ; (ii) all of the entity's activities are only carried out in the UAE;	Exempted Licensee	Yes	No
7	Licensee is an entity wholly owned by UAE residents ("UAE residents" means UAE citizens and individuals holding a valid UAE residency permit, who reside in the UAE) And does not meet any one of the following conditions: (i) the entity is not part of a MNE Group ; (ii) all of the entity's activities are only carried out in the UAE;	Licensee	Yes	Yes
8	Licensee which is an investment fund	Exempted Licensee	Yes	No

SECTION 1 :

A LICENSEE CAN BE (not an exhaustive list)	NOT considered “LICENSEES”
A LIMITED LIABILITY COMPANY	A NATURAL PERSON
A PRIVATE SHAREHOLDING COMPANY	A SOLE PROPRIETORSHIP
A PUBLIC SHAREHOLDING COMPANY	A TRUST
A JOINT VENTURE COMPANY	A FOUNDATION
A PARTNERSHIP <i>(e.g. a limited liability partnership, a limited partnership, a general partnership etc.)</i>	

SECTION 2:

The following are Relevant Activities :
BANKING BUSINESS
INSURANCE BUSINESS
INVESTMENT FUND MANAGEMENT BUSINESS
LEASE-FINANCE BUSINESS
HEADQUARTER BUSINESS
SHIPPING BUSINESS
HOLDING COMPANY BUSINESS
INTELLECTUAL PROPERTY BUSINESS
DISTRIBUTION & SERVICE CENTRE BUSINESS (please refer section 9)

SECTION 3 :

Economic Substance Notification must be submitted electronically on the Ministry of Finance Portal. Licensees that have already submitted a Notification directly to their respective Regulatory Authorities are required to re-submit a Notification in accordance with the provisions of the ESR Regulations on the Ministry of Finance Portal once available.

The Notification must be submitted within six months from the end of the Financial Year of the Licensee or Exempted Licensee. ***(Penalty for failure to submit Notification – AED 20,000)***

SECTION 4 :

Exempted Licensee means any of the following:

- a) A Licensee that is tax resident outside the UAE;
- b) An Investment Fund and its underlying SPVs / investment holding entities;
- c) A wholly UAE resident-owned business that is not part of a MNE group and that only carries out business in the UAE;
- d) A branch of a foreign entity that is subject to tax on all of its Relevant Income in a foreign jurisdiction.
- e) Any other licensee at the discretion of Ministry of Finance.

Sufficient evidence must be submitted along with the Notification form substantiating its status as exempted licensee.

SECTION 5:

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 the entity has derived a profit or loss from its activities.

Gross income means all income from whatever source derived, including revenues from sales of inventory and properties, services, royalties, interest, premiums, dividends and any other amounts, and without deducting any type of costs or expenditure. In the context of income from sales or services, gross income means gross revenue from sales or services without deducting the cost of goods sold or the cost of services.

SECTION 6:

The Economic Substance Report shall be in the form and manner approved by the National Assessing Authority (ie Federal Tax Authority) in coordination with the Competent Authority (ie Ministry of Finance) and shall include the following information and documents with respect to the Licensee for the relevant financial year:

- a) The type of Relevant Activity conducted by it;
- b) The amount and type of the Relevant Income earned by it;
- c) The amount and type of operating expenses and assets in respect of the Relevant Activity carried out by it;
- d) The location of the place of its business and, if applicable, plant, property or equipment used for the Relevant Activity by it in the State;
- e) The number of full-time employees with qualifications and the number of personnel who are responsible for carrying on its Relevant Activity;
- f) The Core Income-Generating Activity in respect of the Relevant Activity being carried out by it;
- g) Its Financial Statements;
- h) A declaration as to whether or not it satisfies the Economic Substance Test;
- i) In the case of a Relevant Activity being an Intellectual Property Business, a declaration as to whether or not it is a High-Risk IP licensee.

ESR Report has to be submitted within twelve (12) months from the end of the relevant Financial Year. ***(Penalty for failure to submit ESR report - AED 50,000)***

SECTION 7 : Economic Substance Test

Economic Substance Test ensures whether the Licensee that undertakes Relevant Activities (and generates Relevant Income thereon) are not used to artificially attract profits that are not commensurate with the economic activity undertaken in the UAE.

A Licensee must satisfy the following criteria to meet the Economic Substance Test in relation to any Relevant Activity carried on by it:

- (a) the Licensee conducts necessary Core Income-Generating Activity in the UAE;
- (b) the Relevant Activity is directed and managed in the UAE;
- (c) having regard to the level of the Relevant Activity, as follows:
 - (i) there is an adequate number of qualified full-time employees in relation to that activity who are physically present in the UAE;
 - (ii) there is adequate operating expenditure incurred by the Licensee in the UAE; and
 - (iii) there is adequate physical assets in the UAE.

SECTION 8 :

Who shall be the Assessing Authority for undertaking the Assessment of the Economic Substance Test?

The Federal Tax Authority is appointed as the National Assessing Authority and shall carry out various functions under the Economic Substance Regulations which includes undertaking assessment to determine whether the Licensee has met the Economic Substance Test.

SECTION 9 : Definition of Distribution and Service Center Business

Licensee is considered engaged in a “Distribution and Service Center Business” if it carries out any of the following activities:

- Purchasing from a Foreign Connected Person component parts or materials for goods; or goods ready for sale, and reselling such component parts, material or goods; or
- Providing services to Foreign Connected Person.

Definition of Connected Person

Connected Person is an entity that is a part of the same Group as the Licensee or the Exempted Licensee.

A Group is defined as two or more entities related through ownership or control such that they are required to prepare consolidated financial statements for financial reporting purposes under the accounting standards applicable thereto.

Foreign Connected Person means a Connected Person that is not tax resident in the UAE.

WAY FORWARD

- Licensees have to reassess the classification and are required to re-submit a Notification for the Financial Year 2019 in accordance with the provisions of the ESR Regulations on the Ministry of Finance Portal once available.
- Exempted Licensee has to submit sufficient evidence along with the Notification form to claim the exemptions from Economic Substance Reporting requirements.
- Licensee shall be prepared with all requisite evidence to file the Economic Substance Report and meet the Economic Substance Test for the Financial Year 2019 by 31 December 2020



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