

Key Amendments to ESR

UAE Government had published Economic Substance Regulations in 2019 & implemented same wef financial year commencing on or after 1st January 2019.

Said regulations have been amended (effectively repealing old regulations) recently by way of Cabinet of Ministers Resolution No. 57 of 2020 & Ministerial Decision no. 100 of 2020.

We highlight below key changes brought about by above amendments to the earlier issued regulation and summarise the key changes made vide said amended regulations:

1. **Coverage:** Natural persons (like unincorporated sole proprietorships or individuals) now not under the purview of ESR. However Unincorporated Partnerships are covered under ESR.
2. **Exemptions:** granted to Investment Funds, Entities tax resident outside UAE, UAE Resident owned entities which are not MNE's and carry out activity in UAE only and Branch of Foreign Cos. whose income is taxed outside UAE
3. **Connected Person:** is defined as an entity that is part of same group (two or more entities related through ownership or control such that they are required to prepare consolidated financial statements for reporting purpose under applicable accounting standards
4. **Relevant Activities Definition Amendment:**
 - i. Distribution Business considered when goods purchased from foreign connected person & sold anywhere (no need to import & store in UAE or sale outside UAE) and Service
 - ii. Service Centre considered when service rendered to foreign connected person (whether within UAE or outside UAE)
 - iii. Holding Company sole objective to be holding of shares or equitable interest in other entities
5. **Notification filing:** By all licensees who carry out relevant activity & to Ministry of Finance via portal. So all licensees (incl. exempted licensees) need to refile notifications via Ministry of Finance portal once it is live.
6. **Core Income Generating Activities:** List not exhaustive & not all CIGA may necessarily be carried out by Licensee depending on their business activities.
7. **Economic Substance Report:** would require filing of Financial Statements.
8. **Penalties:** Increased to AED 20,000/- for failure to file notification, AED 50,000/- for inaccurate information, AED 50,000/- to AED 400,000/- + cancellation / revocation of license for failure to file Economic Substance Report or failure to meet Economic Substance Test.
9. **National Assessing Authority:** Federal Tax Authority designated as National Assessing Authority to carry out assessment of ESR Notification & Reports.
10. **Competent Authority:** Ministry of Finance designated as the Competent Authority
11. **Regulatory Authorities:** Relevant licensing authorities in free zone or mainland continue to be the Regulatory Authorities.