

Economic Substance webinar
The second compliance cycle - UAE

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Speakers



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Max has extensive experience in advising multinational clients with in designing tax robust investment structures and day-to-day tax related matters, including economic substance



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Tim is a Manager within the International and M&A Tax team in Deloitte, Dubai. Tim has over 8 years experience working in direct and international taxation. Tim started his tax career in London before moving to Dubai in 2017.

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Tim advises on a wide range of tax matters and has significant experience advising groups on compliance with economic substance rules.

Overview compliance deadlines

Overview

ESR in UAE

What is the process for a Licensee?

1) Determine if a Relevant activity ("RA") is being carried out

Banking	Insurance	Investment Fund
Intellectual property	Headquarter	Lease Finance
Distribution service centre	Shipping	Holding Company

2) File notification (if RA was carried out)

All regulatory authorities	⇒ Ministry of Finance Portal			
Financial year end	31 Mar	30 Jun	30 Sept	31 Dec
Notification deadline	30 Sept	31 Dec	31 Mar	30 Jun

3) Satisfy ES tests (if income generated from RA and not exempt)

Directed & Managed	Core income generating activities ("CIGA")	Adequacy
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4) Submit ES report (if income generated from RA or not exempt)

All ES returns	⇒ Ministry of Finance Portal
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ES return should be filed within 12 months of the year end

What do I need to report ?

Notification

If it's carrying on a RA	If RA income is subject to tax abroad	Date of FY end
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Report

Type of RA	Amount and type of income	Amount and type of OPEX and assets
Location of business and equipment used	Number of employees with qualifications	Information on CIGAs
Declaration whether ES Test is met	More information in case of high risk IP Business	Further information if RA is outsourced

- Complete RA assessment & consider changes as opposed to FY19
- Get supporting documentation ready

Observations from the first compliance cycle

Observations from the first compliance cycle

Notifications and Reports

Notifications

1. RAs

- Various observations to discuss in following slides.

2. Dual Licensees:

- Holding licenses issued by more than one licensing authorities.

3. Exemptions:

- Branch of a foreign company exemption widely applicable.
- Availability of supporting evidence (12months vs 6months).

4. RA income subject to tax outside the UAE:

- UAE branches of foreign companies or UAE companies caught by CFC rules.
- Overseas withholding taxes on RA income not relevant.

Reports

1. Audited financial statements (FS):

- Now required. Unaudited FS or management accounts can be filed when audited FS are not available.

2. Financial data in respect of RAs:

- Expenses often difficult to identify and do not reconcile with FS.
- Appropriate methodologies to calculate where no actual figures.

3. ES Tests:

- Directed and Managed Test:
 - Article 6 (4): Where a Licensee is managed by a shareholder or partner or by one or more managers, the normal requirements of the ESR (i.e. board of directors must meet in the UEA etc.) shall apply to any such shareholder, partner or manager(s) as if they were a director.
- Directors can be employees where they also perform CIGAs.

4. Groups:

- Group entities to comply with ESR Tests on an individual basis.
- Substance (staff, functions, assets, etc.) maintained in the UAE by other group companies to be evidenced.

Observations from the first compliance cycle

Relevant activities

1. Distribution & Service Centre (DSC):

a) Revised ESR definition for DSC widens scope of distributions activities caught

b) Cost recharges to foreign connected persons (services)

c) 'One-off transactions'

2. Intellectual Property (IP):

a) Agreements with no identifiable IP income and anti-avoidance

b) Sub-licensing of IP assets at cost also caught

3. Holding Company:

a) Implications of holding assets other than equities in companies

b) Related guidance released in similar jurisdictions

Observations from the first compliance cycle

Relevant activities (RAs)

Interaction of RAs

- In certain situations, Licensees conducting multiple RAs do not need to separately demonstrate economic substance in respect of ancillary activities.
- Identify the main business activity. Consider the interaction of the RAs in available guidance.

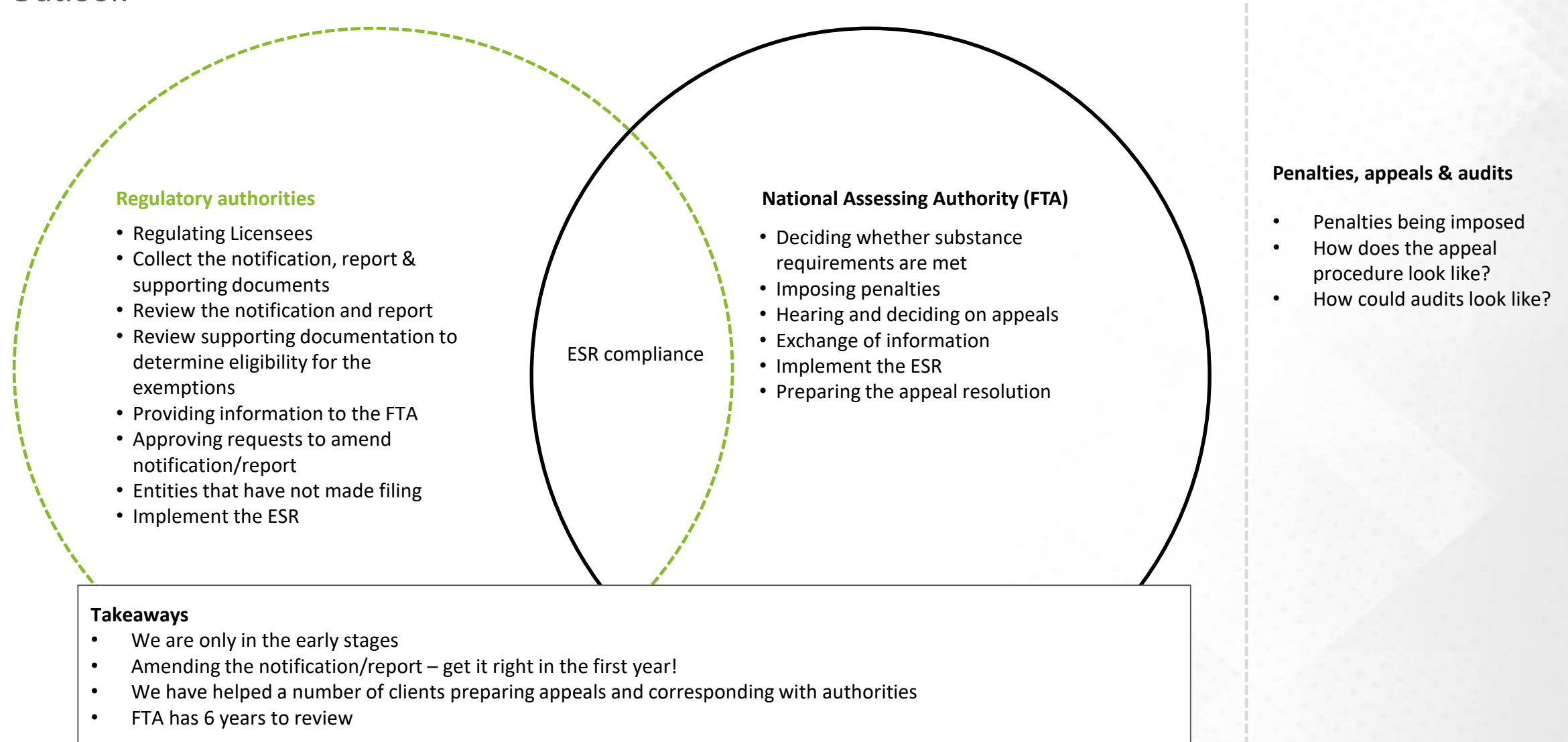
		Main Business							
		Banking	Insurance	Inv Fund Management	Shipping	Lease-Finance	Dist. & Serv. Centre	Headquarters	Intellectual Property
Ancillary activities	1. Banking		x	x	x	x	x	x	x
	2. Insurance	x		x	x	x	x	x	x
	3. Inv Fund Management	x	x		x	x	x	x	x
	4. Shipping	x	x	x		x	x	x	x
	5. Lease-Finance	✓	✓	✓	x		x	✓	x
	6. Dist. & Serv. Centre	✓	✓	✓	✓	✓		✓	✓
	7. Headquarters	✓	✓	✓	✓	✓	✓		x
	8. Intellectual Property	x	x	x	x	x	x	x	

Key:

- ✓ Need not demonstrate separate ES in respect of ancillary RA
- x Need to demonstrate separate ES in respect of ancillary RA

Enforcement

Enforcement Outlook



Governance

Governance

Recommended actions for all Licensees

Notifications

1. Regular review of RA position:

- Assess what (if any) RAs were performed **during** the period.
- Identify implications of any ‘one-off transactions’.
- Assess the amount and type of income earned (if any) from the RA **during** the period.

2. Exemptions:

- Consider timeframe of 6 months to collect supporting evidence required at notification stage to claim the exemption.

3. IP Business:

- Review existing agreements to see if they include an element of IP.
- If yes, consider updating wording in new agreements and or amending existing agreements so income is split out clearly to facilitate reporting.

Compliance with ESR Tests during the period

1. Directed & Managed Test

- Establish procedures to ensure compliance with requirements.
- Identify potential issues with meeting the test in the period and take mitigating steps (e.g., COVID-19 travel restrictions).

2. CIGA Test:

- Identify employees responsible for carrying each RAs CIGAs
 - Identify and mitigate any risks (CIGA conducted outside UAE)
- For any CIGA outsourcing - ensure contractual agreements are in place to govern the relationship and responsibilities of each party

3. Adequate Test:

- Identify employees, expenses and UAE based assets in respect of the RAs
- Ensure access to assets (i.e., premises) can be demonstrated (through agreements and financial records)



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