



**UAE Economic Substance update**  
Key amendments introduced

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## Key amendments introduced

#	Main amendments to ES rules	Original ES rules (Cabinet Of Ministers Resolution 31 of 2019)	Amendment to ES rules (Cabinet Resolution 57 of 2020)	Key Implications
1	<b>Definition of Licensee</b>	<p>A natural or juridical person licensed by the competent licensing authority/ authorities in the State to carry out a Relevant Activity (RA) in the State, including a Free Zone and a Financial Free Zone.</p> <p>Therefore, under the ESR, all entities, including branches, which were issued with commercial licenses in the UAE were considered in scope of the ESR.</p>	<p>A juridical person or an unincorporated partnership that is registered in the UAE and that carries on an RA.</p> <p>The New Guidance also provides that by way of example, limited liability companies, private shareholding companies, public shareholding companies, joint venture companies and partnerships (e.g. a limited liability partnership, a limited partnership, a general partnership, etc.) fall under the definition of licensees.</p> <p>Unincorporated partnerships include partnerships that operate in the UAE without having a legal personality.</p>	<p>The New Guidance indicates that natural persons, sole proprietors, trusts and foundations are no longer in scope of the New ESR. Therefore, they do not need to file a notification or meet the ES Tests.</p>
2	<b>Treatment of Branches</b>	<p>All branches carrying out an RA in the UAE were covered by the scope of the ESR and are required to comply with ES Tests and reporting requirements.</p>	<p>Branches registered in the UAE are an extension of their parent or head office and do not have separate legal personality.</p>	<p>The parent or head office registered in the UAE must file as a single licensee, reporting the RAs of itself and all its branches in one consolidated notification and / or ES report.</p> <p>A branch of a foreign entity registered in the UAE that carries out a RA is required to comply with the New ESR, unless its relevant income is subject to tax in a jurisdiction outside the UAE.</p> <p>This would require the foreign company to report the relevant income of the UAE branch in its corporate tax return, irrespective of</p>

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				<p>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.</p> <p>Where a UAE entity carries on an RA through a branch registered outside the UAE, the UAE entity is not required to consolidate the activities and income of the branch for purposes of the New ESR, provided that the relevant income of the branch is subject to tax in the foreign jurisdiction where the branch is located.</p> <p>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.</p>
3	<b>Exempted Licensees</b>	Commercial companies, as defined in Article 8 of Federal Law No. 2 of 2015 concerning Commercial Companies, in which the Federal Government, the Government of any Emirate of the State, any Government Authority or entity affiliated to either of them owns directly or indirectly at least 51% of the share capital were exempt from the ES Tests.	<p>The following licensees are exempt from the New ESR reporting requirements in the UAE:</p> <ul style="list-style-type: none"> <li>(i) Licensees that are tax resident outside the UAE</li> <li>(ii) Investment funds and underlying SPVs / investment holding entities</li> <li>(iii) Wholly UAE resident-owned businesses that are not part of a multinational group and that only carry on business in the UAE</li> </ul>	<p>In order to qualify for the New ESR exemptions, the following should apply:</p> <ul style="list-style-type: none"> <li>(i) A Licensee that claims to be exempt on the basis of being a tax resident in a foreign jurisdiction is required to submit evidence in the form of documentation issued by the competent foreign tax authority stating evidencing its residency in the other jurisdiction</li> <li>(ii) The definition of an investment fund under the updated guidance would include the</li> </ul>

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			<p>(iv) Branches of foreign entities that are subject to tax on all of their Relevant Income in a foreign jurisdiction.</p> <p>It should be noted that the exempted entities undertaking an RA are still required to file a notification (informing that the entity is exempt). In addition, applicability of the exemption should be evidenced by appropriate documentation along with the notification.</p>	<p>Investment Fund itself and any entity through which the fund directly and indirectly invests, but not the entity or entities in which the fund ultimately invests</p> <p>(iii) The definition of UAE residents includes UAE citizens as well as individuals holding a valid UAE residency permit, who reside in the UAE</p> <p>(iv) An entity is not required to meet the ES Tests if such entity is a branch of a foreign entity and its relevant income is subject to corporate tax in the jurisdiction where such foreign entity is tax resident</p> <p>(v) <b>Government owned entities are no longer exempt from the ES Tests (unless any of the new exemption cases would apply)</b></p>
4	<b>Definition of Connected/Related Person</b>	A natural or juridical person who is related to one or more natural or juridical person(s) through direct or indirect ownership or control, or common control.	<p>An entity forming part of the same group to which the licensee or exempt licensee belongs.</p> <p>Group is defined as two or more entities related through property or control to the extent, pursuant to the applicable accounting standards, that preparing standard financial statements for purposes of submitting the financial reports is required.</p>	The definition provided in the New ESR provides clearer guidance on which transactions would be treated as performed between related persons.

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5	<b>Distribution and Service Centre Business RA</b>	<ul style="list-style-type: none"> <li>- Purchasing from a Foreign Connected Person and <b>importing and storing in the State</b>: component parts or materials for goods; or goods ready for sale, and reselling such component parts, - materials or goods outside the State</li> <li>- Providing services to Foreign Connected Persons in connection with a business outside the State</li> </ul>	<ul style="list-style-type: none"> <li>- Buying from a foreign related person, components of parts, materials for goods or commodities ready for sale and re-sale of these components or goods.</li> <li>- Providing services to foreign related persons</li> </ul>	<p>The updated definition of the Distribution and Service Centre Business in the New ESR excludes the reference to ‘import and store the goods in the UAE’. Therefore, if a UAE entity is purchasing and selling goods but the goods do not physically enter/are stored in the UAE, the entity would be considered conducting an RA.</p> <p>Moreover, the reference to ‘in connection with a business outside the UAE’ has been removed from the definition of the Distribution and Service Centre Business in order to widen the coverage of services provided from a UAE entity to a foreign related party.</p>
6	<b>ES notification</b>	Licensees were required to file the Notification with the respective Regulatory Authority at the time and format specified by the respective Regulatory Authority.	All Licensees regardless of whether they are exempt, are required to file a notification electronically on the MOF portal within six months from the FY end.	Licensees that have already submitted a Notification directly to their Regulatory Authorities are required to re-submit a notification in accordance with the provisions of the New ESR at the MOF Portal once available.
7	<b>ES Report</b>	<p>The report shall be in the format approved by the competent Authority.</p> <p>The report was to include various information with respect to the Licensee.</p>	<p>The report should be prepared in the form and method approved by the National Assessment Authority in coordination with the Competent Authority.</p> <p>The requisite information and documentation prescribed under the ESR remains largely the same, but notably the New ESR now includes financial reports.</p>	Licensees required to submit a report should take note that in addition the information and documentation prescribed in the ESR, financial reports are now required as part of the New ESR report submission.

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8	<b>Penalties for non-compliance</b>	<p>Provision of inaccurate information and failure to meet the ES Tests would trigger administrative penalties starting from AED 10k up to AED 50k (first offence).</p> <p>Consequent non-compliance would trigger penalties ranging from AED 50k – AED 300k. Administrative sanctions as exchange of information and non-renewal/ suspension of trade license would still apply.</p>	<p>The penalty amount for the initial instance of failure to submit a notification or ES report, or meet the ES Tests has been increased to AED 20k and up to AED 50k.</p> <p>Second instance of failure would trigger penalties of AED 400k, automatic exchange of information and non-renewal/ suspension of trade license.</p>	<p>Taking into account the increase of penalties, further amendments in the New ESR and the introduction of the FTA as the Assessing Authority, it can be expected that enhanced scrutiny will be applied in order to confirm if Licensees are in compliance with the new ESR.</p>
9	<b>Role of the Regulatory Authority and Introduction of National Assessing Authority</b>	<p>The Regulatory Authorities (i.e. the free zone authorities or the Ministry of Economy) were responsible to regulate an RA for the purpose of the ESR, including assessing the compliance with ES Tests, receive the notification and report filings and exchange any information with the Ministry of Finance i.e. the “Competent Authority”.</p>	<p>The Federal Tax Authority (FTA) has become the “National Assessing Authority” to oversee compliance and control with the New ESR, and responsible for assessment of substance, appeals, and penalties.</p> <p>The Regulatory Authorities are responsible for monitoring compliance with the notification and reporting obligations under the New ESR, identifying possible licensees, validating information submitted, determining whether a relevant entity meets the requirements to be treated as exempt and sharing information with the FTA and MOF.</p>	<p>The Regulatory Authorities will still have a key role in assessing the compliance of the New ESR, however they will provide support to the FTA that will be the assessing authority. The intention is to have a centralized approach to ensure consistency in the application of the New ESR.</p>
10	<b>Exchange of information</b>	<p>The MoF, pursuant to an international agreement, treaty or similar international arrangement provide information to a</p>	<p>The MoF will exchange information with relevant Foreign Competent Authorities pursuant international agreement,</p>	<p>The MoF has expanded the cases where information would be exchanged with foreign competent authorities from being a punitive measure (or related to High Risk IP) to be a</p>

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		Foreign Competent Authority when:	treaty or arrangement in the following circumstances:	source of information for confirmation of tax residency of AE entities and branches.
		- Licensee fails to satisfy the ES Tests	- Licensee fails to satisfy the ES Tests	
		- Licensee is a High Risk IP Licensee	- Licensee is a High Risk IP Licensee	
			- UAE entity claims to be tax resident in a jurisdiction outside the UAE	
			- UAE branch of a foreign entity that claims to be subject to tax in a jurisdiction outside the UAE.	



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