

## Economic Substance Regulations

### Guidance Note (May 2020)

#### Background

The Economic Substance Regulations (“ESR”) were introduced in 2019 ([Cabinet Resolution No. 31 of 2019](#)) with the aim of ensuring that businesses which perform so-called geographically mobile activities have economic substance in the jurisdiction where its income is being reported. This means that businesses will need to demonstrate that the income generated (and profits reported) in the UAE adequately correspond with the economic activities actually undertaken in the UAE (“**Economic Substance**”).

The first year of reporting under the ESR is 2019 and all UAE based companies, branches and other commercial license holders (together referred to as “**Licensees**”), including those in the Creative Zone, must now start reporting under these regulations.

#### Relevant Activities

Under the ESR, all Licensees are obliged to self-assess whether or not they performed any Relevant Activities in the previous financial year. The Relevant Activities under the ESR are:

- Banking Business
- Investment Fund Management Business
- Headquarters Business
- Holding Company Business
- Distribution and Service Centre Business
- Insurance Business
- Lease – Finance Business
- Shipping Business
- Intellectual Property Business

More detailed information on the types of Relevant Activities is provided in the Guidance to the ESR ([Ministerial Decision No 215 of 2019](#)) and the UAE Ministry of Finance’s [Relevant Activities Guide \(“Relevant Activities Guide”\)](#).

#### Economic Substance Notification

The first step under the ESR is for all Licensees to self-assess and self-report whether or not Relevant Activities were performed during the financial year which precedes the Notification due date. As the appointed Regulatory Authority of Licensees established in the Creative Zone ([Cabinet Resolution No 58. of 2019](#)), **all Licensees must submit the Economic Substance Notification to the Creative Media Authority (“CMA”) on or before 30 June 2020** in relation to the preceding financial year, started on or after 1 January 2019. For example, for Licensees with their financial year starting 1 January 2019, the first reportable period under the ESR will be 1 January – 31 December 2019.

Licensees are expected to use a ‘substance over form’ approach in determining whether or not they undertake a Relevant Activity. This means Licensees should not limit themselves to the activities stated under their business license but all activities actually performed in the UAE should also be considered. The Notification Form and User Guide, which has been provided to the MZA by the Ministry of Finance, is available for Licensees to complete and submit through this link [Economic Substance Notification](#).

#### Economic Substance Report

The second step under the ESR for Licensees performing one or more Relevant Activities, is to file an Economic Substance Report (“**Report**”), as a means of demonstrating that the Licensee’s Core Income Generating Activities (“**CIGA’s**”) are conducted in the UAE. The CIGA’s are those activities that are of central importance to the Licensee for the generation of the gross income earned from its Relevant Activities, and these are further explained per Relevant Activity in the Relevant Activities Guide. In the Report, Licensees must

provide information on the level of their Economic Substance in the UAE, considering items such as having adequate (i) number of employees, (ii) operational expenses, (iii) physical office space, and (iv) evidence that the Licensee is directed and managed in the UAE, among others. Please note that High Risk IP Businesses (as defined in the Relevant Activities Guide) must meet increased substance and reporting requirements. A Licensee must self-declare in the Report whether it satisfies these Economic Substance tests.

Companies in which the UAE Federal Government or the Government of any Emirate of the UAE or any governmental authority or body of any of them which has at least 51% direct or indirect ownership in its shareholding will be exempt from the ESR, but must still file the Notification.

The template Report has not yet been made available by the Ministry of Finance. CMA will inform Licensees once the template Report is available and the deadline for submission.

#### **Sanctions for non-reporting, late reporting or inaccurate reporting**

Both the Notification and subsequent Report must be filed accurately and within the applicable deadline, in order to avoid penalties. Licensees not meeting the Economic Substance tests may also see their information exchanged by the UAE Ministry of Finance with the tax authorities of jurisdictions of the Licensees' direct parent company, ultimate parent company and/or ultimate beneficial owner. Licensees qualifying as High Risk IP Businesses will have their information automatically exchanged with those tax authorities, regardless of whether the Economic Substance tests are met. More information on penalties can also be found under question 40 of the Ministry of Finance's [Frequently Asked Questions](#) on ESR.

#### **What is required from you now?**

All CMA Licensees are required to accurately complete and submit the Notification Form with CMA **on or before 30 June 2020** using the following link: [Economic Substance Notification](#).

Please note that CMA will not be able to assist Licensees with their self-assessment for the Economic Substance Notification or provide advice on the Relevant Activities. We recommend that Licensees obtain independent advice if they are unclear on any of the above requirements.