



ASSESSMENT, APPEAL AND EXCHANGE OF INFORMATION ECONOMIC SUBSTANCE REGULATIONS JUNE 2020

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Assessment, Appeal and Exchange of Information Economic Substance Regulations

Our May 2020 Newsletter highlighted about following, with respect to Economic Substance Regulations (ESR), in accordance with Cabinet of Ministers Resolution No. 31 of 2019 read with Cabinet Resolution No. 58 of 2019 further read with the Relevant Activities Guide:

- ESR Requirements
- Relevant Activities
- State Core-Income Generating Activities
- Reporting Requirements
- Penalties
- Exemption
- Regulatory Authorities

This month (June 2020) Newsletter will focus on the following aspects in relation to ESR:

- Assessment
- Appeal
- Exchange of Information

Assessment

The relevant Regulatory Authority, in accordance with Article 7 of the Cabinet of Ministers Resolution No. 31 of 2019 (the Resolution), is to make a determination as to whether a Licensee meets the Economic Substance Test for any financial year in respect of each Relevant Activity carried out by the Licensee in the United Arab Emirates (UAE).

The time limit to make determination, pursuant to said Article 7, is:

- Not later than six years from the end of the financial year to which the determination relates;

- The six years' time limitation shall not apply where the relevant Regulatory Authority is not able to make a determination, within this time limit, by reason of any deliberate misrepresentation or neglect or fraudulent action by the Licensee or by any person.

Article 7(3) of the Resolution mandates the relevant Regulatory Authority, in case of High Risk IP Licensee, to determine that Economic Substance Test is not met unless the Licensee provides sufficient information to satisfy the relevant Regulatory Authority that Economic Substance Test is met.

A Licensee shall provide, to the relevant Regulatory Authority, any such additional information/documents/other records as shall be reasonably required by the relevant Regulatory Authority to make the subject determination.

According to Article 10(2) of the Resolution, if the relevant Regulatory Authority determines that a Licensee has failed to meet the Economic Substance Test for a financial year, the relevant Regulatory Authority must issue a notice to the Licensee notifying the following:

- That the Regulatory Authority has determined that the Licensee does not meet the Economic Substance Test for the said Financial Year;
- The reasons for that determination;
- The amount of administrative penalty imposed on the Licensee;
- The date upon which the administrative penalty is due, being not less than thirty business days after the issue of the notice;
- What action(s) the Regulatory Authority considers should be taken by the Licensee to meet the economic substance test; and
- The Licensee's right of appeal.

Appeal

A Licensee, upon whom the relevant Regulatory Authority has imposed a penalty, may appeal against the penalty on the following grounds:

- Liability to that penalty does not arise.
- Appeal against the amount of penalty.

The procedure for an appeal is to be issued by the relevant Regulatory Authority.

In case of filing of an appeal, the penalty imposed under the Resolution is not payable till the date appeal is finally determined or withdrawn.

Exchange of Information

The relevant Regulatory Authority, subject to Licensee's right of appeal, when determines that a Licensee has not met the Economic Substance Test for a financial year, is to provide the information (provided by the Licensee under Article 8 of the Resolution for that financial year) to the Ministry of Finance.

In respect of High-Risk IP Licensee, regardless of whether or not the relevant Regulatory Authority has made a determination (about whether the High-Risk IP Licensee has not met the Economic Substance Test), the relevant Regulatory Authority is to provide the information (as aforesaid) to the Ministry of Finance.

The Ministry of Finance, pursuant to an international agreement, treaty or similar international arrangement to which UAE is a party, shall provide the information referred to herein above to:

- The Foreign Competent Authority of the country or territory in which resides the parent company, the ultimate parent company, and the Ultimate Beneficial Owner of such Licensee.
- If the Licensee (or the High-Risk IP company) is incorporated outside the UAE, the Foreign Competent Authority of the country or territory in which the company is incorporated.

Please share your queries & responses

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