



Economic Substance Regulations

Not an option, but an obligation

ESR



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ESR UAE

The Economic Substance Regulations (ESR), introduced in the United Arab Emirates through Cabinet of Minister Resolution No. (31) of 2019 on April 30, 2019, serve the purpose of aligning the country with global standards in order to combat detrimental tax practices. These regulations were established in accordance with guidelines set by the Organization for Economic Cooperation and Development (OECD) Forum on Harmful Tax Practices. The main requirement under ESR is for entities engaged in geographically mobile business activities to have substantial operations in the UAE.

In a parallel effort, the European Union Code of Conduct Group (EU COCG) has also developed a code of conduct for business taxation to address harmful tax practices. The UAE Cabinet of Ministers adopted the ESR Regulations, taking into consideration the relevant standards outlined by both the OECD and the EU COCG.

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Relevant Activities

Licensees conducting Relevant Activities in the UAE must demonstrate Economic Substance and submit reports to Regulatory Authorities. Relevant Activities include:

- Banking Business
- Insurance Business
- Fund Management Business
- Financial or Leasing Business
- Intellectual Property
- Headquarters Business
- Shipping Business
- Holding Company Business
- Distribution and Services Business

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THE AMENDMENTS TO THE ESR

The ESR amendments, introduced through Cabinet of Minister Resolution No. (57) of 2020 on August 10, 2020, and further guided by Ministerial Decision No. (100) of 2020 on August 19, 2020, address key changes in the Regulation:

- Redefined Licensee criteria
- Exempted Licensee status
- Adjustments to Relevant Activities These changes apply to financial years starting on or after January 1, 2019. Entities within the Regulation's scope must annually submit their ESR Notification and Economic Substance Report to their Regulatory Authority within 12 months of their financial year-end (e.g., by December 31, 2021, for a financial year ending on December 31, 2020).

Entities without income from Relevant Activities or meeting ESR exemption criteria need only submit a notification form, exempt from the Economic Substance Test.

Non-compliance with ESR submission leads to penalties, information exchange with foreign Competent Authorities, and administrative sanctions. The Ministry of Finance's notice provides comprehensive information for entities engaging in Relevant Activities, outlining the ESR Requirements and Deadline in accordance with Cabinet Decision No. (57) of 2020 and Ministerial Decision No. (100) of 2020.

MINISTRY OF FINANCE PORTAL

The revised Economic Substance Regulations specify that Notifications must be submitted electronically through the Ministry of Finance Portal within six months of the Licensee's financial year-end.

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NEW CABINET RESOLUTION NO 57 OF 2020 REVOKING CABINET RESOLUTION NO 31 OF 2019

The Resolution's aim is to assess whether a Licensee is engaged in an activity with meaningful economic presence in the United Arab Emirates.

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NOTICE REGARDING ESR FILING REQUIREMENTS AND DEADLINES

The Ministry of Finance (MOF) has released a notification concerning the revised Economic Substance Regulation (ESR) Filing Requirements and Deadlines. This notification offers guidance to entities engaged in Relevant Activities, obligating them to submit Notifications and/or Economic Substance Reports in line with Cabinet Decision No. 57 of 2020 and Ministerial Decision No. 100 of 2020.

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FAQ

Is it really required to resubmit the ESR Notification?

Per Ministerial Decision 100, Notifications must be filed within six months of the Licensees' financial year-end. Licensees who already submitted Notifications to Regulatory Authorities must resubmit to the Ministry of Finance.

What if I fail to submit my ESR Notification and Report before 31 of December?

The consequences for not meeting the ESR deadline include the following penalties:

- AED 20,000 for not submitting the ESR Notification with necessary documents.
- AED 20,000 for failing to resubmit the ESR Notification (for those who initially submitted it directly to Regulatory Authorities).
- AED 50,000 for not submitting the ESR Report.

At what time should I file the ESR Notification and Report?

You are required to submit ESR Notification within six months of the end of your financial year. If your financial year concluded on December 31, 2021, your ESR Notification must be filed by June 30, 2022. Similarly, if your financial year ended on December 31, 2021, the ESR report should be submitted by December 31, 2022.

How can we help you during this time?

AMCA offers professional, efficient assistance for ESR compliance. We provide:

1. ESR Testing: Assessing your company's ESR applicability.
2. ESR Notification Filing: Assisting in ESR Notification preparation.
3. ESR Report Filing: Preparing ESR Reports per MOF requirements.
4. ESR Notification Resubmission: Helping with Article 4.4 compliance for ESR Notifications.