



كلايد اند كو
CLYDE & CO

Economic Substance Regulations

Adrian Low

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Background

- OECD/EU Blacklisting
- Cabinet Ministers Resolution No.31 of 2019 concerning Economic Substance Regulations
Published 30 April 2019
- Ministerial Decision No.215 of 2019 on the issuance of directive for the implementation of the provisions of the Cabinet Decision No.31 of 2019 concerning Economic Substance requirements
Published 11 September 2019

Who does it apply to?

- Applies onshore and in freezones
- Not if direct or indirect 51% ownership by:
 - Federal Government
 - Emirate-level Government
 - Federal or Emirate-level government authority

What does it mean?

- Direct impact on entities conducting Relevant Activities
 - Banking
 - Insurance
 - Investment fund management
 - Finance leasing
 - Headquarter operations
 - Shipping
 - Holding company operations
 - Intellectual property operations
 - Distribution and services centres

Meeting the Economic Substance Test

- Must conduct “core income generating activities” (or **CIGA**) in the UAE
- If conducting more than one activity must satisfy CIGA requirements for each Relevant Activity
- Must be *directed and managed* in the UAE in relation to the CIGA
- Must have an adequate number of qualified full-time employees who are physically present in the UAE, or adequate expenditure on outsourced third party providers (who in turn have activities, employees, expenditure and premises in the UAE)
- Adequate operating expenditure in the UAE (or outsourced in the UAE)
- Adequate physical assets in the UAE (or outsourced expenditure)
- If CIGA carried out by a third party provider in the UAE, ability to monitor and control the activity of that provider

Demonstrating compliance – *directed and managed*

- Board meetings with adequate frequency
- Quorum physically present in the UAE
- Meetings recorded in written minutes signed by the directors attending
- Minutes record strategic decisions taken at the meeting
- Directors have necessary knowledge and expertise
- Minutes are kept in the UAE
- Branch offices and representative offices, or commercial companies without a board but with a single manager, the manager is physically present in the UAE when making key decisions

Holding company - exception

- If only income is dividends and capital gains – true holding company
- Only requirement is for:
 - filing documentation in accordance with laws
 - adequate employees and premises
- If any other income received, entity is not a holding company

Intellectual Property – special treatment

- Core focus for profit shifting
- Classification of High-Risk IP

Either

(a) UAE entity

- did not create the IP
- acquired the IP from:
 - a Connected Person; or
 - from funding R&D by another person outside UAE
- Licences IP to a Connected Person or guarantees income from assets as a result of activities by a Foreign Connected Person

or

(b) UAE entity does not carry out R&D, or branding, marketing and distribution as part of its CIGA in the UAE

- Presumption does not satisfy Economic Substance Test
- Greater reporting obligations

Reporting obligations (1)

- From 1 January 2020
 - Conduct of Relevant Activity (or not)
 - Gross income subject to tax outside UAE
 - Date of end of Financial Year
- By end of 2020 FY
 - Type of Relevant Activity
 - Amount and type of income
 - Amount and type of operating expenses and assets
 - Location of place of business and plant and equipment used in the UAE
 - Full time employees and who is responsible for Relevant Activity
 - Information showing CIGA that has been conducted
 - Declaration of satisfaction on the test

Reporting obligations (2)

- Declaration as to IP/High-Risk IP business
 - Demonstration of satisfying control over development/exploitation/protection
 - Business Plan
 - Employee information
 - Evidence of decision making in the UAE
- Outsourcing reporting
 - Any other information required/requested
 - Reporting in English
 - Report to Regulatory Authority (not yet identified by anticipated to be licencing authority (e.g. DED, Freezone authority, etc)

Exchange of information

- Regulatory Authority to Competent Authority (MoF)
- If test failed Competent Authority shares information with:
 - Foreign Competent Authority of parent/UBO
 - If incorporated outside UAE, country of incorporation
- For High-Risk IP entity information automatically shared

Penalties

- Failure to meet Economic Substance Test
 - AED10,000-50,000 year 1
 - AED50,000-300,000 year 2 onwards
- Notified of steps required to remedy
- Suspension, revocation or non-renewal of licence (year 2)
- Inaccurate information
 - AED10,000-50,000
- Six years to assess information and make decision
- Right of appeal

Next steps

- Analyse business activities
- Prepare evidence of CIGA
- Ensure decision making made in UAE and record evidence

Any Questions?

Adrian Low, Partner
Adrian.low@clydeco.com
Tel: +971 4 384 4000

440

Partners

2500

Legal
professionals

4000

Total staff

50+

Offices* worldwide

*** Includes associated offices**

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