



Economic Substance Regulations— Headquarter Business

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A hand in a dark suit sleeve is drawing a line graph on a whiteboard. The graph has several data points connected by lines, with three callout bubbles pointing to specific points. The background is a dark blue overlay with faint grid lines and numbers. In the top left corner, there are three yellow diagonal stripes.

Headquarter Business

Headquarter Business as per Cayman Island ES Law

Relevant Activity	Definition	Cayman Islands CIGA
Headquarter Business	<p>means the business of providing any of the following services to an entity in the same Group -</p> <ul style="list-style-type: none">(a) the provision of senior management;(b) the assumption or control of material risk for activities carried out by any of those entities in the same Group; or(c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b), <p>but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business</p>	<ul style="list-style-type: none">(i) taking relevant management decisions;(ii) incurring expenditures on behalf of other Group entities;(iii) co-ordinating Group activities

Headquarter Business as per BVI Rules on ES

Headquarters business, and the related concept of a “group” are defined in ESA section 2:

“headquarters business” means the business of providing any of the following services to an entity in the same group:

- (a) the provision of senior management
- (b) the assumption or control of material risk for activities carried out by any of these entities in the same group
- (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b)

but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business.

“group”, in relation to a company (the “first company”), means the first company and any other company that is

- (a) a parent of the first company;
- (b) a subsidiary of the first company;
- (c) a subsidiary of a parent of the first company; or
- (d) a parent of a subsidiary of the first company;

Headquarter Business as per BVI Rules on ES

“parent”, in relation to a company (the “first company”), means another company that, whether acting alone or under an agreement with one or more other persons,

- (a) holds, whether legally or equitably, a *majority of the issued shares* of the first company;
- (b) has the power, directly or indirectly, to exercise, or control the exercise of, a *majority of the voting rights* in the first company;
- (c) has the right to appoint or remove the *majority of the directors* of the first company;
- (d) has the right to exercise a *dominant influence over the management and control* of the first company pursuant to a provision in the constitutional documents of the first company; or
- (e) is a *parent of a parent* of the first company;

“subsidiary”, in relation to a company (the “first company”), means a company of which the first company is a parent;

Whether an entity carries on headquarters business is **not dependent** on its position in the group structure. It is entirely dependent on the services it provides to other companies in the group, whether parents or subsidiaries.

For example: A group includes, as a subsidiary, a **service company** which **employs all the employees** in the group. If senior management in the group are employed by the service company it will be providing headquarters services to the group.

Headquarter Business As per UAE ESR

- A Licensee is regarded as carrying on a **Headquarters Business** if the Licensee **provides services to foreign group companies**, and through the provision of such services:
 - The Licensee **takes on the responsibility for the overall success of the group**; or
 - The Licensee is **responsible for an important aspect of the overall group's** performance.

For carrying on a **Headquarters Business**, the services provided by the entity must involve:

- the **provision of senior management**;
- the **assumption or control of material risk** for activities carried out by foreign group companies; or
- **substantive advice** in relation to the assumption or control of such risks.

Headquarter Business

Special Points for consideration

- A Licensee's **position in a group's corporate structure** is not relevant for determining whether it is engaged in a Headquarters Business.
- The Licensee **does not need to be the direct or ultimate parent** of a group company for it to be considered a Headquarters Business; whether an entity carries on a Headquarters Business is entirely dependent on the nature of the services it provides to foreign group companies.
- To prevent duplicate reporting, Banking, Insurance, Investment Fund Management, Lease-Finance, Shipping or Distribution and Service Centre Businesses are not also considered engaged in a Headquarters Business.

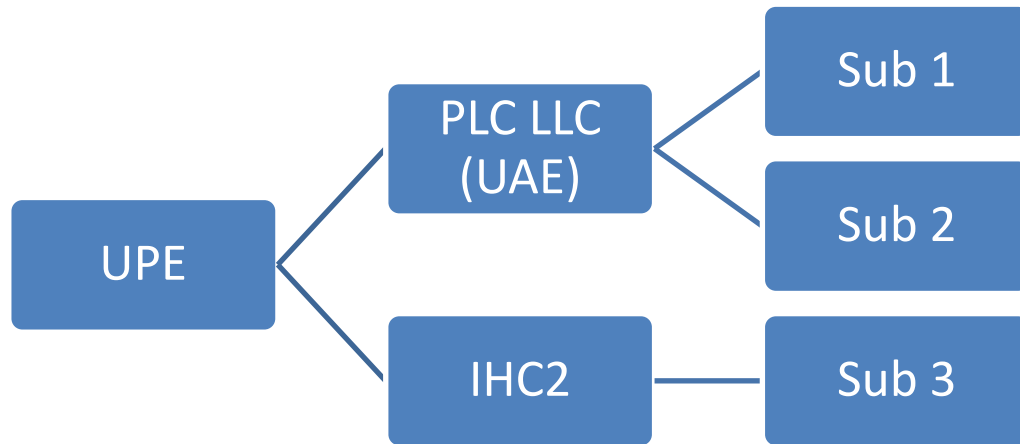
Headquarter Business – Core Income Generating Activity (CIGA)

“Taking relevant
management
decisions’

‘Incurring operating
expenditures on
behalf of group
entities’

‘Coordinating
group activities’

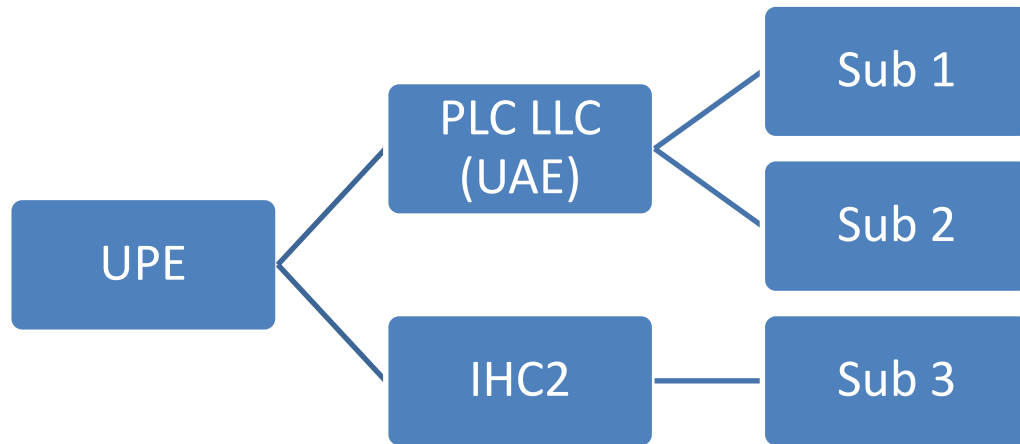
Scenario 1



PLC LLC (UAE) is part of a Multinational Group with subsidiaries around the world.

- Each of the Senior Management team based in the UAE has responsibility for a different region, and regularly spends time at the subsidiaries with the local management teams providing strategic direction and helping manage material risks
- PLC LLC supports the group in managing risk through the procurement of external advice centrally, and the associated costs are shared amongst the group.

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PLC LLC's Activities are within the scope of a Head quarter Business

Scenario 2



FGH LLC (UAE) is part of a UK Headquartered group and has subsidiary in Kingdom of Saudi Arabia (KSA).

- Senior management of FGH LLC have regular contact with the management of KSA Subsidiary on the performance of their business and to share insights from the group; and
- FGH LLC as shareholder has certain rights and influence in respect of management and operation of KSA Subsidiary
- KSA Subsidiary follows strategic direction and manage risks in line with Corporate policies set by the Headquarter in UK.

Scenario 2

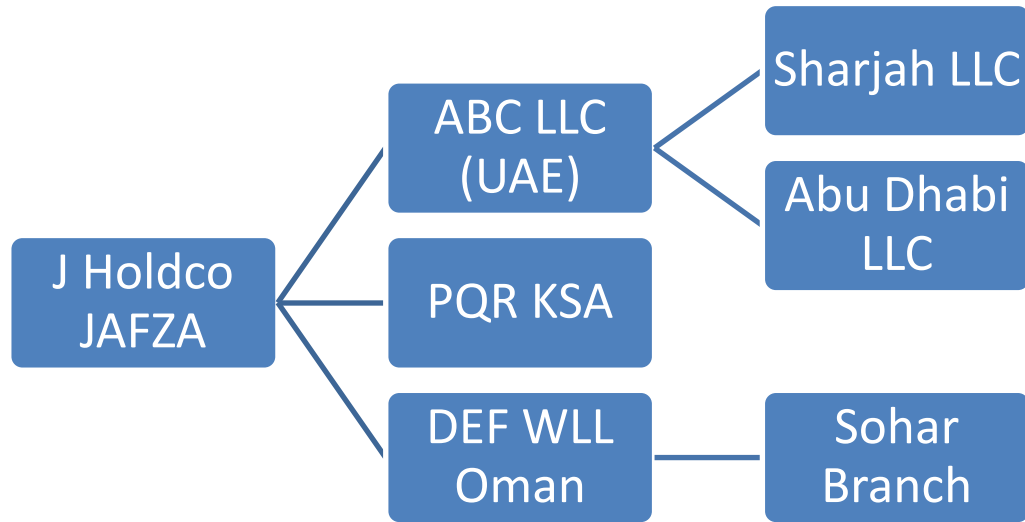


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- FGH LLC as shareholder has certain rights and influence in respect of management and operation of KSA Subsidiary
- KSA Subsidiary follows strategic direction and manage risks in line with Corporate policies set by the Headquarter in UK.

FGH LLC's Activities are not within the scope of a Head quarter Business, as strategic direction of group is set by UK parent and not FGH LLC and FGH LLC is not responsible for performance of KSA Subsidiary.

Scenario 3



ABC LLC (UAE) is part of a Multinational Group with subsidiaries around the GCC and parent co being in JAFZA.

- The Senior Management team based in the UAE has responsibility for entire group's operation, and regularly spends time at the subsidiaries with the local management teams for Business reviews
- KSA and Oman has its local management team which updates head office of the market scenario and product planning for the market, etc.
- ABC LLC has availed Banking facilities and provides supplier credits to KSA and Oman entities to facilitates its working capital requirements
- Procurement for the products is centralised with ABC LLC UAE and the team does procurement for the group with direct shipment being sent to KSA and Oman.

IS ABC LLC UAE a Head quarter Business ?

Requirement of Economic Substance Test (Article 6 of ESR)



Substance Requirement



The company should be directed and managed in the UAE for the specific activity



The company's CIGA should be performed in the UAE



The company should have an adequate level of qualified employees, premises and annual operating expenditures

Substance over Form Doctrine

[Substance over form](#) is both a principle and a doctrine.

- As an accounting principle, it is designed to ensure that an entity's financial statements provide an accurate and complete overview of its events and transactions. These statements measure and report the economic impact of a transaction instead of its legal form, which could conceivably mislead people on its true intent.
- The substance over form doctrine allows the Tax authorities to ignore an arrangement's legal form and examine its actual substance, with the goal of preventing artificial structures from being used to avoid paying taxes. In USA, It arose from a 1935 Supreme Court case that disallowed tax benefits for a transaction with a form that varies from its substance.

Today, the substance over form doctrine is regarded as the seminal form of two other doctrines:

[Economic Substance Doctrine](#), which denies tax benefits for transactions that have no apparent business purpose and are solely designed to avoid tax liability. This is what has been advocated in BEPS Action 5 on harmful tax practices.

[Step Transaction Doctrine](#), which combines a series of technically separate steps, resulting in tax treatment as a single integrated event. This is now included as part of General Anti Avoidance Rules (GAAR) in domestic tax laws of few countries. E.g. India.

Thank you

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Terima kasih

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Vielen Dank

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Teşekkür ederiz

Hvala

Terima kasih

Ua tsaug

Gràcies

Grazie

Vielen Dank

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Ua tsaug

Terima kasih

Ua tsaug

Gràcies

Grazie

Vielen Dank

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Dziękuję

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Tak

vă mulțumesc

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