

مدينة الشارقة للإعلام
Sharjah Media City



SHARJAH MEDIA CITY (Shams)

UAE Economic Substance Regulations Guidance

15 June 2020

UAE Economic Substance Regulations

مدينة الشارقة للإعلام
Sharjah Media City



OVERVIEW

To demonstrate the UAE government's commitment as a member of the Organisation for Economic Co-Operation and Development (OECD)'s Inclusive Framework, and in response to European Commission ('EU') concerns which resulted in the UAE being added to the European Union list of non-cooperative tax jurisdictions (the 'black list'), the UAE introduced Economic Substance Regulations ('ESR') on 30 April 2019. The ESR applies to all Licensees that carry on a 'Relevant Activity' for financial periods commencing on or after 1 January 2019.

The full ESR regime in the UAE consists of the following federal legislations:

- [Cabinet Resolution No. \(31\) of 2019](#) concerning Economic Substance Regulations ('ESR') issued on 30 April 2019, as amended by [Cabinet Resolution No. \(7\) of 2020](#) dated 7 January 2020;
- [Cabinet Decision No. \(58\) of 2019](#) on the Determination of the Regulatory Authorities for ESR purposes, issued on 4 September 2019; and
- [Ministerial Decision No. \(215\) of 2019](#) on the issuance of Directives for the Implementation of the provisions of ESR, issued on 11 September 2019

Please also see the link to the complete set of Regulations, guidance and notifications from the Ministry of Finance on the last page of this communication.

ESR require onshore and companies in free zones (such as Shams), and other UAE business forms (including branches, partnerships, etc.) that carry out any of the 'Relevant Activities' to maintain an adequate 'economic presence' in the UAE relative to the activities they undertake.

ESR has been designed to ensure that entities in the UAE were not established to artificially attract profits that are not justified in light of the actual economic activity undertaken in the UAE.

The Sharjah Media City Free Zone Authority ('Shams Free Zone Authority') is the Regulatory Authority for all entities operating within Shams for ESR purposes.

This document has been issued by the Shams Free Zone Authority to provide high level guidance to its member entities in the application of the UAE ESR.

This document must be read in conjunction with the UAE ESR and any other relevant Shams regulations and directives. This document is not in any way intended to replace nor substitute the actual regulations.

Please be advised that Shams member entities are responsible in ensuring full compliance with ESR. For any uncertainty regarding the application of ESR, Shams recommends consulting a professional advisor.



Who is subject to ESR?

All UAE onshore and free zone companies, branches, partnerships and other UAE business forms (referred to as 'Licensees').

For ESR purposes, a 'licensee' is defined as a natural or juridical person licensed by the competent authority/authorities in the UAE to carry out a Relevant Activity in the UAE, including a free zone (such as Shams) and a financial free zone.

Accordingly, all entities operating within Shams are required to assess their obligations under the ESR.

Who are exempt from demonstrating economic substance?

- Shams licensees in which the 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
- Shams licensees that do not carry out any Relevant Activity
- Shams licensees that carry out a Relevant Activity but do not earn income from such activity

However, please note that the above mentioned Shams licensees are still required to file the ES notification form for the relevant reportable period.

What are the 'Relevant Activities'?

The nine (9) Relevant Activities under ESR are as follows:

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

Shams licensees must use a 'substance over form' approach to determine whether or not they undertake a Relevant Activity.

Each Shams licensee is responsible for making their own assessment of whether or not they are conducting a Relevant Activity, as well as taking the necessary steps to comply with ESR.

Further information on Relevant Activities can be accessed on this [link](#).



How does a Shams licensee demonstrate economic substance?

To demonstrate economic substance in the UAE, a Shams licensee (except for licensees carrying on a 'Holding Company' business and those that are 'High Risk IP' licensees) must meet all three (3) of the following conditions:

- Core Income Generating Activities ('CIGA's) must be conducted in the UAE
- The Shams licensee is directed and managed in the UAE in relation to the Relevant Activity that such Shams licensee undertakes
- Have adequate employees, physical assets and expenditures in the UAE

Please note that reduced economic substance requirements are applicable to licensees carrying on a 'Holding Company' business as defined under ESR. Whereas, there are increased economic substance requirements for 'High Risk IP' licensees.

For further information with respect to economic substance tests, please click this [link](#).

What are the ESR compliance obligations for Shams licensees?

All Shams licensees are required to:

- Submit the **ES notification form** with Shams on an annual basis, as to whether or not they undertake any Relevant Activity during the relevant Reportable period. **The due date for the first notification is 30 June 2020.**

Shams licensees which are not exempt, and undertake a Relevant Activity (and earned income from such Activity) during a relevant financial year are required to:

- Meet the economic substance test; and
- Submit the **ES Return** with Shams annually, within twelve (12) months from the end of the licensee's financial year. **The first ES Return for the financial year ended 31 December 2019 is required to be filed on or before 31 December 2020.** Licensees with financial year end other than a calendar year may have a different due date for the ES Return.

Shams does not allow filing a single/consolidated ES notification form and/or return covering two (2) or more licensees. Therefore, each Shams licensee must file the ES notification form, and where applicable an ES Return on a standalone basis.



What are the consequences of non-compliance?

Please note that in accordance with Article 11 of the Cabinet Decision No 31 of 2019, the following administrative offences/penalties will be imposed for the following non-compliances:

- **Failure to submit the ES notification** – Penalty of AED 10,000 to AED 50,000

- **Failure to provide accurate or complete information** – Penalty of AED 10,000 to AED 50,000. The Shams licensee will also be automatically considered to have failed demonstrating economic substance in the UAE.

- **Failure to demonstrate sufficient economic substance in the UAE for a relevant financial year:**
 - **First offence** – Penalty of AED 10,000 to AED 50,000. Furthermore, Shams may disclose the licensee’s information with the foreign competent authority
 - **Second consecutive year of offence** – Penalty of AED 100,000 to AED 300,000. Shams may also disclose the licensee’s information with the foreign competent authority. Furthermore, the licensee’s license may be suspended, revoked or not renewed.

How can Shams assist?

For inquiries, please contact economicsubstances@shams.ae or call 800 – SHAMS (74267).

We are also pleased to announce that Shams (in collaboration with KPMG Lower Gulf Limited) will be holding a webinar session on **21 June 2020 (from 11AM-12PM UAE time)** exclusively for all its member entities to provide more information on the background and requirements set out in the UAE ESR. Shams member entities are encouraged to attend the webinar, and pre-register at this [link](#).



Sources and Links:

□ UAE Ministry of Finance:

▪ Cabinet Resolution No. (31) of 2019:

https://www.mof.gov.ae/en/lawsAndPolitics/CabinetResolutions/Documents/Cabinet%20of%20Ministers%20Resolution%20No%20%2031%20of%202019%20Concerning%20Economic%20Substance_English.pdf

▪ Cabinet Resolution No. (7) of 2020:

https://www.mof.gov.ae/en/lawsAndPolitics/CabinetResolutions/Documents/Cabinet_Resolution_7_2020.pdf

▪ Cabinet Decision No. (58) of 2019:

<https://www.mof.gov.ae/en/lawsAndPolitics/CabinetResolutions/Documents/Cabinet%2BResolution%2BNumber%2B58%2Bof%2B2019.pdf>

▪ Ministerial Decision No. (215) of 2019:

<https://www.mof.gov.ae/ar/StrategicPartnerships/Documents/Ministerial%2Bdecision%2Bno.%2B215%2Bfor%2Bthe%2Byear%2B2019.pdf>

▪ UAE Economic Substance Flowchart:

[https://www.mof.gov.ae/en/StrategicPartnerships/Documents/Economic-Substance-UAE-Economic-Substance-Flowchart%20\(1\).pdf](https://www.mof.gov.ae/en/StrategicPartnerships/Documents/Economic-Substance-UAE-Economic-Substance-Flowchart%20(1).pdf)

▪ Frequently Asked Questions:

<https://www.mof.gov.ae/en/StrategicPartnerships/Pages/ESR.aspx>

▪ Relevant Activities Guide:

https://www.mof.gov.ae/ar/StrategicPartnerships/Documents/Relevant%2BActivities%2BGuide%2B_April%2B2020.pdf

▪ Covid-19 Industry Advisory Notification:

<https://www.mof.gov.ae/ar/StrategicPartnerships/Documents/COVID-19%2B-%2BEnglish.pdf>

