UPDATE: ECONOMIC SUBSTANCE REGULATIONS FILINGS CANCELLED

Date: 31 October 2024

UAE Policy and Regulatory Alert

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CHANGES TO THE ECONOMIC SUBSTANCE REGULATIONS

The UAE Ministry of Finance (MOF) announced on 14 October 2024 the cancellation of the requirement for Licensees conducting one or more Relevant Activities and generating Relevant Income in the UAE from submitting an Economic Substance Notification and Economic Substance Report for financial years ending after 31 December 2022. The MOF announcement was made after Cabinet Decision No. 98 of 2024 amending certain provisions of the ESR (Cabinet Decision) was issued.

The Cabinet Decision states that all fines previously issued under the ESR for financial years that ended after 31 December 2022 will be cancelled. The Cabinet Decision further clarifies that any fines that were paid by a Licensee under the ESR for financial years that ended after 31 December 2022 will be refunded.

The Cabinet Decision came into effect as of 2 September 2024.

BACKGROUND

The majority of onshore and free zone companies registered in the United Arab Emirates (UAE) are subject to the Economic Substance Regulations (ESR), which were issued in 2020 pursuant to UAE Cabinet of Ministers Resolution No. 57 of 2020 Concerning Economic Substance Requirements and Ministerial Decision No. 100 of 2020 on the Issuance of Directives for the Implementation of the Provisions of the Economic Substance Requirements.

In brief, a “Licensee” is any legal person (incorporated in or outside the UAE) or unincorporated partnership registered in the UAE, that conducts one or more “Relevant Activities” and generates “Relevant Income” is required to maintain and demonstrate adequate “economic presence” in the UAE relative to the Relevant Activities it undertakes i.e., the “Economic Substance Test.” This necessitated the filing of an annual Economic Substance Notification and, if applicable, an annual Economic Substance Report in respect of the Licensee's last financial year with the MOF.

A full summary of the ESR (including definitions for terms that are capitalized in this client alert) can be found in our previous client alert, which can be accessed here.

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KEY TAKEAWAYS

- ESR will only apply to a Licensee's financial years commencing on 1 January 2019 and ending on 31 December 2022.
- Licensees are no longer required to submit an Economic Substance Notification and (if applicable) an Economic Substance Report for financial years ending after 31 December 2022.
- All administrative penalties incurred by Licensees for financial years ending after 31 December 2022 will be waived or refunded if they have already been paid. The Federal Tax Authority will process the refund of any paid penalties. The mechanism for the refund process has not been announced yet.
- Companies in the UAE are still required to consider their position under the UAE's Federal Corporate Income Tax regime and must ensure they comply with any requirements that apply to them.

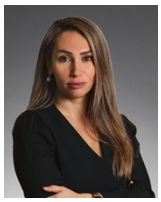
CLOSING REMARKS

The Cabinet Decision is a clear indication of the UAE Government's proactive and pragmatic approach to update its legislation to remain competitive and continue fostering local and foreign investment.

We recommend companies to consult with their legal and tax advisors to confirm their position in light of the changes to the ESR and the application of the UAE's Federal Corporate Income Tax regime.

This client alert is not intended to be construed as legal advice or to provide a comprehensive summary of all or any of the laws mentioned. Please reach out to discuss any particular question or concern that you may have.

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