



Amendments in ESR Regulations

The Ministry of Finance on 10th Aug'20 approved **Cabinet Resolution 57** and **Ministerial Decision No. 100 of 2020** repealing and replacing **Cabinet Resolution 31** and **Ministerial Decision No. 215** on Economic Substance Regulations (ESR).

I. Key Amendments and Impact

#	Clause	Amendment	Nimai-RAMA's Perspective
1	Important Amendments in Definitions (Article 1 of Cabinet Resolution 57)		
a.	Licensee	<ul style="list-style-type: none"> i. Removed "Natural" Person ii. Clarified "Juridical" Person to include incorporated inside or outside UAE iii. Included "Unincorporated Partnership" 	Individuals, sole proprietors, trusts, foundations and unincorporated entities except partnerships are kept out of purview of ESR, this is in line to the general expectations of the law.
b.	Exempted Licensee**	<ul style="list-style-type: none"> i. Tax residents outside UAE ii. Investment fund & its underlying SPVs iii. Business wholly owned by UAE resident (individual), not part of a MNE (multinational group) and carries on business only in UAE iv. Branch of a foreign entity, if all of its Relevant Income is taxed in foreign jurisdiction 	<p>Removed the earlier exemption for Entities directly or indirectly owned at least 51% by the UAE Govt. or Govt. Authorities, hence such entities are required to comply</p> <p>Relief for local business owned by UAE residents and carrying relevant activity</p> <p>Relief for branch of foreign entities</p>

****Exempt entities must file a notification and provide sufficient documentary evidence to substantiate and benefit from their exempt status ([Article 8 of CR 57](#))**

#	Clause	Amendment	Nimai-RAMA's Perspective
c.	MNE (Multinational Group)	Group of two or more entities having tax residency in different jurisdictions or an entity tax resident in one jurisdiction and is subject to tax in another jurisdiction through its branch or permanent establishment	Important definition to determine exemption for local businesses, businesses may re-look their corporate structures It would be important to have due documentation in place
d.	Connected Person	Amended to specify, entities being part of the same "Group" Group is defined as, two or more entities related through ownership or control that requires to be consolidated as per the applicable Accounting Standards Further, amended the definition of Foreign Connected Person to include only connected persons that are tax resident outside UAE.	A major and much required amendment simplifying the identification of Connected Person, however requires a closer evaluation of applicable accounting standards (IFRS 10)
e.	Relevant Income	"Gross Income" earned in the UAE or outside the UAE without deducting any type of costs or expenditure	Clarified to remove any ambiguity while declaring Relevant Income, it does not mean taxable income, accounting income or profit
2	Important Amendments in Other Provisions of the Law		
a.	Article 5 of Cabinet Resolution 57 – National Assessing Authority (NAA)	Federal Tax Authority (FTA) is appointed as the NAA for ESR as well along with VAT	Very important amendment to centralise tax related laws under FTA, it also strengthen the FTAs role and ability to monitor non-compliances having access to wider data / information
b.	Article 4.4 of Ministerial Decision No. 100 – Timeline for Notification Filing	Within 6 months of the Licensees financial year end <i>Require to resubmit the notification already filed is required on the Ministry of Finance portal (Form not available on the portal yet)</i>	Removes ambiguities created by avoiding different timelines declared by different Regulatory Authorities at the cost onetime efforts of businesses to re-submit the Notifications already filed (may be an opportunity to correct errors / incorrect interpretation in past)

#	Clause	Amendment	Nimai-RAMA's Perspective								
c.	Article 3 of Ministerial Decision No. 100 – Branches	Clarified that the activities of the Branches will be clubbed with the Parent / HO's filings	Much needed amendment to remove the confusion on multiple Notification filings, specifically for Retail companies, banks etc. having very high number of branches								
		<table border="1"> <thead> <tr> <th>Branches</th> <th>Treatment</th> </tr> </thead> <tbody> <tr> <td>UAE branch of a UAE business</td> <td>Will be clubbed with Parent Entity</td> </tr> <tr> <td>UAE branches of a foreign business</td> <td>Exempt, if income is taxed outside UAE</td> </tr> <tr> <td>Foreign branch of a UAE business</td> <td>Not in scope, if income is taxed outside UAE</td> </tr> </tbody> </table>		Branches	Treatment	UAE branch of a UAE business	Will be clubbed with Parent Entity	UAE branches of a foreign business	Exempt, if income is taxed outside UAE	Foreign branch of a UAE business	Not in scope, if income is taxed outside UAE
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d.	Article 11 of Cabinet Resolution 57 – Exchange of Information	Included to share the information regarding entity or branch of a foreign entity that claims to be a tax resident in jurisdiction outside the UAE	Will restrict misuse of the exemption by businesses Important to have the necessary documentation in place (e.g. tax residency certificate, tax returns filed)								
e.	Article 13, 14 and 15 of Cabinet Resolution 57 – Penalties and Offences	Non-filing of Notification – AED 20,000 Non-filing of Report – AED 50,000 along with deemed failure to prove Economic Substance Earlier highest penalty of AED 300,000 has been increased to AED 400,000	Demonstrates the resolve of the Authorities to ensure due implementation of the regulations								
f.	Article 8 (5) of Cabinet Resolution 57 – Information Required in ESR Report	Added submission of Financial Statements apart from the already stated requirement of providing the financial information in the ESR Report	This amendment was anticipated, important for entities not maintaining separate financials for its multiple licenses It would be much advised to avoid maintaining combined financials. Also, the audited financials will definitely carry higher importance from compliance perspective.								

II. Important Changes in Relevant Activities

#	Relevant Activity and Prescribed Amendment	Nimai-RAMA's Perspective
1	Distribution Business Removed the requirement of Goods to be imported and stored in UAE (even High Sea sales may attract)	This was already corrected in the ESR Relevant Activity Guide released earlier and rightly corrected in the law as well, again reassuring the emphasis on "Substance Over Form"
2	Service Centre Business Removed requirement for services to be provided "in connection with a business outside the State", thus any service provided to Foreign Related party will be considered as Service Centre Business	Welcome amendment as the earlier clause was not in line with the premise of the law and was difficult to substantiate as well
3	High Risk IP Removed the clause "the Licensee does not carry out research and development, or branding, marketing and distribution as part of its State Core Income-Generating Activity", hence resolving a major ambiguity in the previous law	Much needed and welcomed amendment, by virtue of the literal reading of the earlier law would have included any IP (irrespective of being bought from a connected person) as a High Risk IP, with the amendment the definition of High Risk IP has become definitive and clear.
4	Holding Company Business Removed the requirement that "the company should be a Holding Company in accordance with the law" Also, clarified that Real estate owned and solely used for Holding Company Business will not prevent such Licensee from being considered as carrying on a Holding Company Business.	Resolving the ambiguities of not having a Holding company license (again "Substance over Form" prevails)

III. Key Takeaways From The Amendments

1. With these amendment the Authorities have made the provision more definitive to reduce scope of multiple interpretation of the law

2. The business must re-assess and re-evaluate the positions taken based on the earlier law and take corrective actions, if required

3. All Licensees (including Exempted) are required to submit the ESR Notification for FY19 on MOF's portal, irrespective of earlier Notification filed

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