



UAE Anti Money Laundering Webinar Series : Week 1

Finance and Tax delivered through technology

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About the Instructor



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Topic : **BEPS and ESR**

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Concept of Base Erosion & Profit Shifting (BEPS)

High-Tax jurisdiction

Tax Base



12 NTJ's as per OECD

1. Anguilla,
2. Bahamas,
3. Bahrain,
4. Barbados,
5. Bermuda,
6. British Virgin Islands,
7. Cayman Islands,
8. Guernsey,
9. Isle of Man,
10. Jersey,
11. Turks and Caicos Islands,
12. **United Arab Emirates**

Preferential Tax regimes

No or only Nominal Tax Jurisdictions (NTJ)

Coherence

Neutralize the effects of Hybrid Mismatch arrangements

Controlled Foreign Company

4
Limit Interest Deductibility

Substance

5
Preferential Tax Regimes

6
Prevent Tax Treaty

7
Prevent Artificial Avoidance of PE Status

8 to 10
Transfer Pricing

Transparency

5
Exchange of Information on Tax Rulings

11
BEPS Data Analysis

13
Country-by-Country Reporting

12
Mandatory Disclosure Rules

Mutual Agreement Procedure

Horizontal

Multilateral Instrument

1
Digital Economy

BEPS 15 Action points

1

Digital Economy

2

Neutralize the effects of Hybrid Mismatch arrangements

3

Controlled Foreign Company

4

Limit Interest Deductibility

5

Preferential Tax Regimes
Exchange of Information on Tax Rulings

6

Prevent Tax Treaty

7

Prevent Artificial Avoidance of PE Status

8 to 10

Aligning Transfer Pricing outcomes with value Creation :
8 : Intangibles,
9 : Risk & Capital and
10 : other High-Risk Transactions

11

BEPS Data Analysis

12

Mandatory Disclosure Rules

13

Country-by-Country Reporting

14

Mutual Agreement Procedure

15

Multilateral Instrument

OECD/ G20 : INCLUSIVE FRAMEWORK ON BEPS

BEPS 15 Action points



BEPS 2.0



Pillar 1

Aims to reallocate taxing rights over multinational enterprises (with > 20 Billion €) from their home countries to the markets where they have business activities and earn profits, regardless of physical presence.



Pillar 2

Introduces a global minimum corporate tax rate of 15% to ensure multinational enterprises pay a minimum level of tax on all of their income, preventing tax base erosion through profit shifting to low-tax jurisdictions.

Applicability of ESR : License Holder

- ✓ An Individual (Freelance Visa Holder) or
- ✓ A Sole establishment

YES

ESR is Not Applicable

NO

(a) a juridical person (incorporated inside or outside the State); or
(b) a Unincorporated Partnership;
registered in the State, including a Free Zone and a Financial Free Zone

Carries on a Relevant Activity ?

YES

Are you a Licensee that is wholly owned by one or more residents in UAE and meets the following two conditions :
(1) it is not part of an MNE Group; and
(2) it only carries out business in UAE.

YES

Exempted Licensee

A Licensee that is an Investment Fund

YES

A Licensee that is a branch of a foreign entity the Relevant Income of which is subject to tax in a jurisdiction other than UAE

YES

A Licensee that is a tax resident in a jurisdiction other than UAE

YES

- ESR Notification must be submitted within 6 months from the end of FY & Evidencing
- **Exempted to Demonstrate the Economic Substance in UAE & No ESR Report Filing**

YES

Licensee

Relevant Income generated during the FY ?

YES

- Required to Demonstrate the Economic Substance in UAE.
- **ESR Notification** must be submitted within 6 months from the end of the FY.
- **ESR Report** must be submitted within 12 months from the end of the FY.

NO

1) Does ESR applicable, even if the relevant activities are not stated on the Trade License, but are only carried by License ?

2) What if the licence is not actively engaged in any of the relevant business ?
(eg: the passive receipt of income under a finance lease would be considered as carrying on a Lease-Finance Business ?)

3) What if Licensee is undertaking more than one Relevant Activity ?
It requires for demonstrating economic substance in respect of each Relevant Activity, unless the other Relevant Activities are ancillary to a main Relevant Activity.

4) Does ESR still applies, if the Licensee is Invoicing to its group company on cost to cost basis with no profit/ Mark up ?

Important Definitions

1. Group: Two or more entities related through ownership or control such that they are required to prepare Consolidated Financial Statements for financial reporting purposes under the accounting standards applicable thereto.

IFRS 10 : Definition of Control

Control of an investee : An investor controls an investee when the investor is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee.

2. Connected Person: An entity that is a part of the same Group as the Licensee or the Exempted Licensee

3. Foreign Connected Person: a Connected Person that is not tax resident in UAE.

4. MNE Group : refers to any group that includes its entities in different tax jurisdictions or an entity taxed in one jurisdiction and through a branch or permanent establishment subject to tax in another jurisdiction

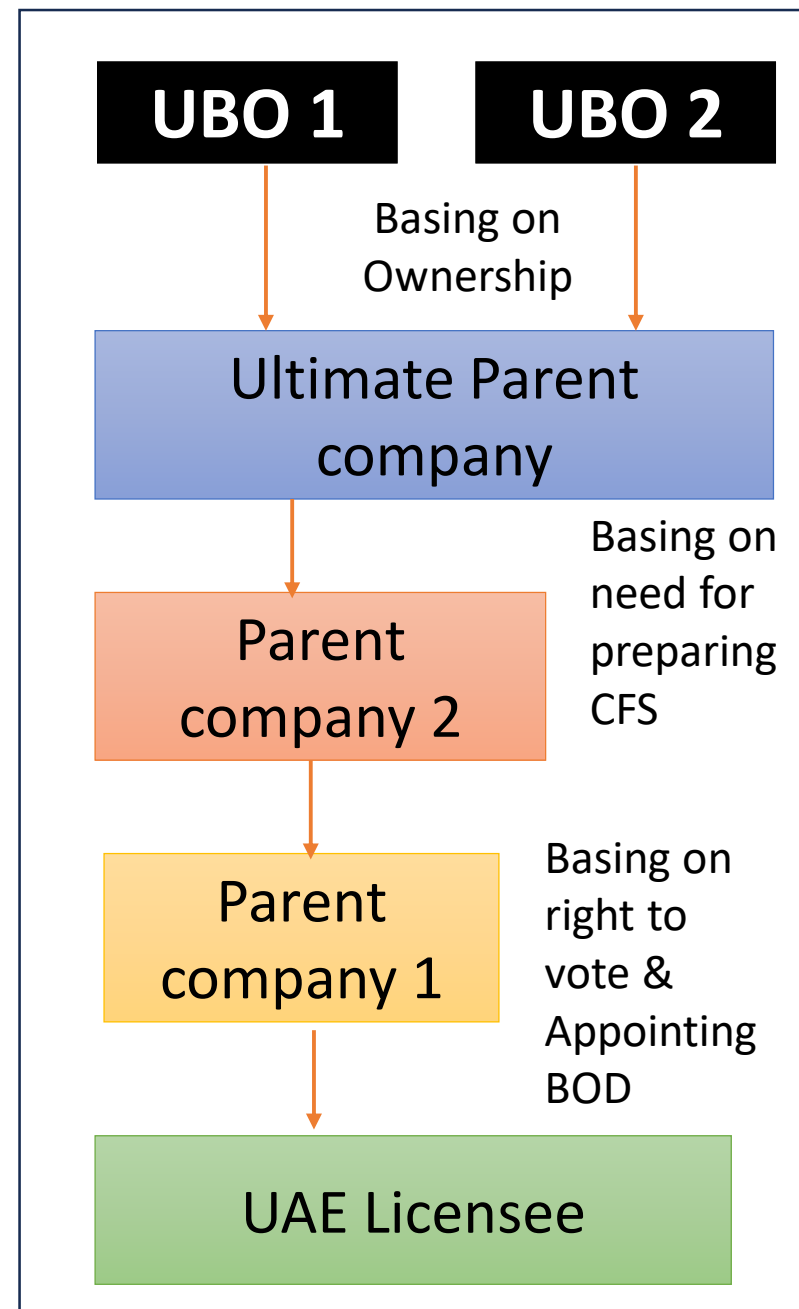
Ultimate Beneficial Owner: **an individual who owns** directly or indirectly twenty five percent **(25%) or more** of the share capital of the Licensee or the Exempted Licensee.

Parent Company: means an entity that directly –

- (a) **holds a majority of voting rights** in the Licensee or the Exempted Licensee; or
- (b) has the **right to appoint** or remove a **majority of the boards of directors** of the Licensee or the Exempted Licensee; or
- (c) controls alone or pursuant to a joint arrangement with other shareholders or members, a majority of the voting rights in the Licensee or the Exempted Licensee; or
- (d) has the right to exercise, or actually exercises, dominant direct influence or control over the Licensee or the Exempted Licensee.

Ultimate Parent Company: means an entity of a Group that-

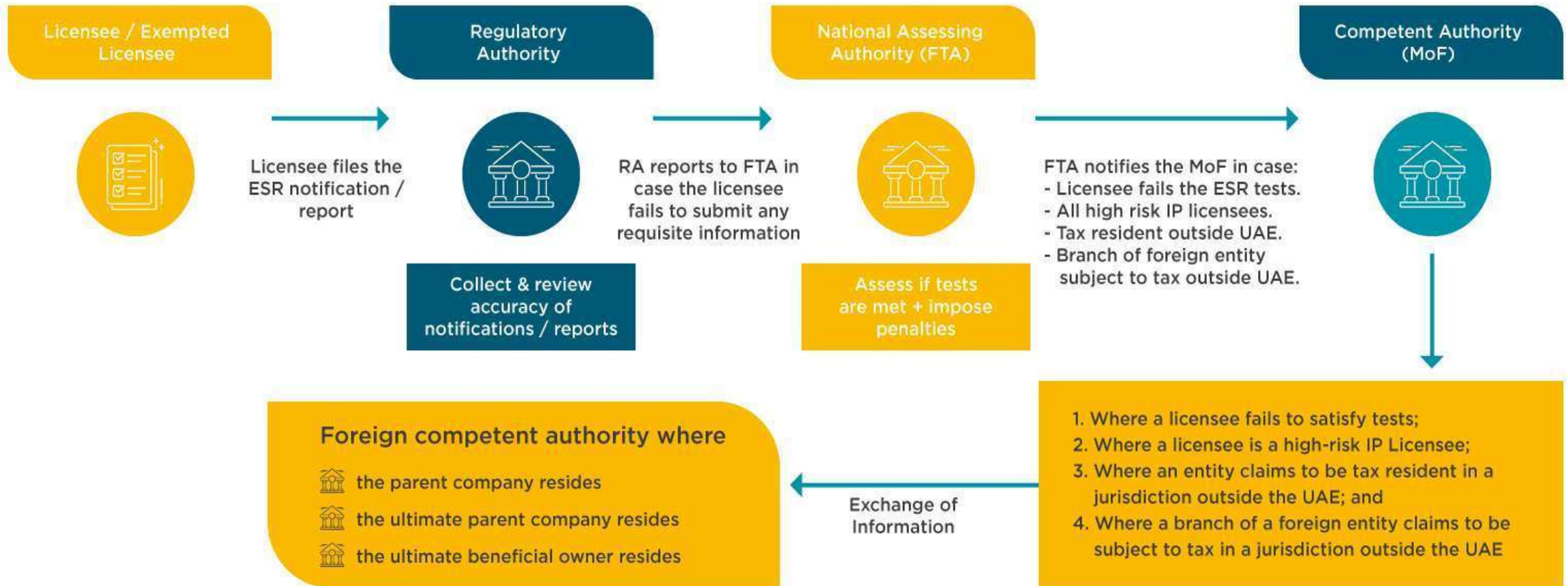
- (a) **owns directly or indirectly a sufficient interest** in the Licensee or the Exempted Licensee such that it is **required to prepare Consolidated Financial Statements under the accounting standards** applicable thereto **or** would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; **and**
- (b) there is **no other entity in the Group** that owns directly or indirectly a sufficient interest in such entity such that it is **required to prepare Consolidated Financial Statements** under the accounting standards applicable thereto, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence.



The Economic Substance Test

Exchange of Information

ESR Administration and Information Flow



Penalties

- AED 50,000 if the licensee fails to submit report or doesn't meet the requirements of the tests in the first year
- AED 400,000 if it happens in the second year also.
- AED 50,000 if the information given to RA or FTA is not correct/ accurate.
- AED 20,000 if notification is not submitted.
- License annulment for persistent non-compliance.

Distribution and Service Centre Business

Lease-Finance Business

Intellectual Property Business

High Risk IP Licensee

Corporate Tax : QFZP Activities

Income from Qualifying Intellectual Property

S N	Nature of Expense incurred for Qualifying Intellectual Property	Qualifying Expenditures	Overall Expenditures
A	Expenditures incurred to fund research and development activities :		
	(i) Conducted Directly by the Qualifying Freezone Person	INCLUDE	INCLUDE
	(ii) Outsourced to any Person in the State	INCLUDE	INCLUDE
	(iii) Outsourced to any Person outside the State that is not a Related Party	INCLUDE	INCLUDE
	(iv) Outsourced to any Person outside the State that is a Related Party	NOT TO INCLUDE	INCLUDE
B	Expenditures directly connected with the creation, invention or significant development of the Qualifying Intellectual Property	INCLUDE	INCLUDE
C	Acquisition costs of the Qualifying Intellectual Property	NOT TO INCLUDE	INCLUDE
D	Expenditures on <u>Non Qualifying Intellectual Property</u>	NOT TO INCLUDE	NOT TO INCLUDE

Headquarters Business

Shipping Business

Holding Company Business

Investment Fund Management Business

Banking Business

Insurance Business

Q & A



Thank you



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