



Dubai International  
Financial Centre

# UAE Economic Substance Regulations

Outreach session

November 2020



# Agenda

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Following topics shall be covered as part of the outreach session today:

<b>Topic</b>	<b>Presented by</b>
01 Welcome & Introduction	<b>Tanuja Paramasivam</b>
02 Background	<b>Tanuja Paramasivam</b>
03 Who is subject to the Regulations?	<b>Tanuja Paramasivam</b>
04 Summary of the Key Changes	<b>Tanuja Paramasivam</b>
05 Impact of Changes	<b>Lori Baker</b>
06 Next steps and filing on the MOF Portal	<b>Lori Baker</b>
07 Consequences of non-compliance	<b>Lori Baker</b>
08 Q&A	



# 01

## Welcome & Introduction



# 02

## Background

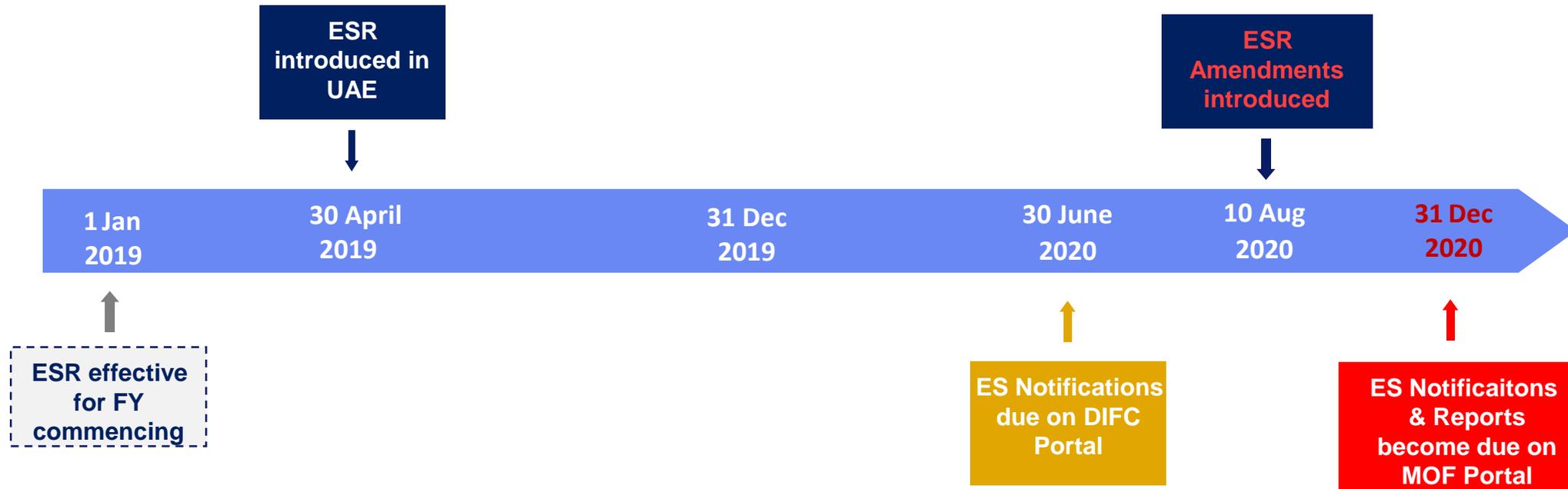
# Background

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- On **30 April 2019**, UAE enacted Economic Substance Regulations ([CR 31 of 2019](#)) and issued Guidance ([MD 215 of 2019](#)) on the application of the Regulations
- In consultation with the OECD and the EU, the UAE amended the ESR ([CR 57 of 2020](#), “Amended ESR”) and updated its Guidance and Relevant Activities Guide ([MD 100 of 2020](#)), in **August 2020**
- All firms that conduct one or more “**Relevant Activities**” must re-submit a further Economic Substance Notification (“Notification”) and/or an Economic Substance Report (“Report”), electronically *on the Ministry of Finance Portal* (“MOF Portal”), even if they have already filed a Notification on the DIFC Portal. Reports, where required, must also be filed on the MOF portal
- The filing deadline for re-submissions of notifications and submissions of reports (if due) is **31 December 2020**. Further information, including the MOF [Notice](#) in relation to ESR Filing Requirements and Deadlines on the MOF Portal, is available on the MOF website and the DIFC ESR FAQs site

# Background - Timeline

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# 03

**Who is subject to the Regulations?**

# Who is in Scope?

Banking Business	Insurance Business	Fund Management Business	<h2>In Scope</h2> <ul style="list-style-type: none"> <li>The Regulations <b>apply</b> to all entities registered in UAE (onshore, free zone or financial free zone):             <ul style="list-style-type: none"> <li>that conduct 1 or more <b>Relevant Activities</b></li> <li>for financial years commencing on or after <b>1 January 2019</b></li> <li>that are not <b>Exempted Licensees</b></li> </ul> </li> </ul> <p>ESR applies to following <u>DIFC entities</u>:</p> <table border="1"> <tr> <td>Private Company (Ltd)</td> <td>Foundations</td> </tr> <tr> <td>Public Company (Plc)</td> <td>NPIO</td> </tr> <tr> <td>Partnerships (GP, LP, LLP)</td> <td>Branches (limited cases)</td> </tr> </table>	Private Company (Ltd)	Foundations	Public Company (Plc)	NPIO	Partnerships (GP, LP, LLP)	Branches (limited cases)
Private Company (Ltd)	Foundations								
Public Company (Plc)	NPIO								
Partnerships (GP, LP, LLP)	Branches (limited cases)								
Financing or Leasing Business	Headquarters Business	Shipping Business							
Holding Company Business	Intellectual property (“IP”) holding or exploitation	Distribution and Service Business							

\*Refer to the Relevant Activities Guide in Schedule 1 of the new [Guidance](#) (MD 100/2020)

# Who is out of Scope?

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## Exempted Licensees:

- The new ESR Legislation introduces **new exemptions**
  - **Exempted Licensees** are:
    - Investment Funds
    - Entities that are tax resident\* outside the UAE (subject to corporate tax outside UAE)
    - Entities wholly owned by UAE residents that:
      - i. are not part of a multinational group; and
      - ii. only carry out business in the UAE
    - UAE branches of a foreign entity subject to corporate tax\* outside UAE
- \*Evidence must be submitted with ESR Notification (eg corporate tax certificate, corporate tax assessment or evidence of payment etc)
- **Removal of exemption** for entities owned 51% or more by the **UAE Government**

## Consequences of being an Exempted Licensees

- ✓ Required to submit an ESR Notification
- ✗ Not required to file an ESR Report or meet ESR Test



# 04

## Summary of Key changes

# What are the key changes?

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## Recent Amendments to ESR:

- August 2020 UAE enacted new [Economic Substance Regulations](#) (CR 57/2020) and [Guidance](#) (MD 100/2020) which repealed and replaced the previous ESR & Guidance
- Changes to **in-Scope** entities
  - Revised definition of 'Licensee' and 'Exempted Licensee'
  - Clarification regarding 'branches'
- Amendments to **Relevant Activities**
  - 'Distribution and Service Centre Business'
  - 'High Risk IP Business'
- Clarification of **Filing timelines**
  - Notifications must be filed on the MOF Portal within 6 months of Financial Year End
  - Reports must be filed on the MOF Portal within 12 months of Financial Year End
- **Relevant Income** and other key terms
- Clarification of **Roles & Responsibilities** of key authorities:
  - Appointment of UAE Federal Tax Authority
  - Role of Regulatory Authorities and MOF as the Competent Authority
  - ESR administration and information flow

# How are branches treated?

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## Branches under the new ESR:

### UAE Branch of UAE Business

#### Single notification

Filed in main jurisdiction

Reporting all relevant activities of all branches

### UAE Branch of Foreign Business

#### Not subject to ESR

If subject to corporate tax outside UAE

### Foreign Branch of UAE Business

#### Not required to report

If foreign branch subject to corporate tax outside UAE

\*Note: Rep Offices are all branches and therefore if they meet the exemptions above then they are an Exempted Licensee and only need to file a Notification to confirm their status as an Exempted Licensee.

# Changes to Relevant Activities

## Spotlight on Distribution & Service Centre Business

### Distribution and Service Centre Business

Two distinct activities, covered under one “Relevant Activity”

### Distribution Business

Requires **all** of the following conditions to be met:

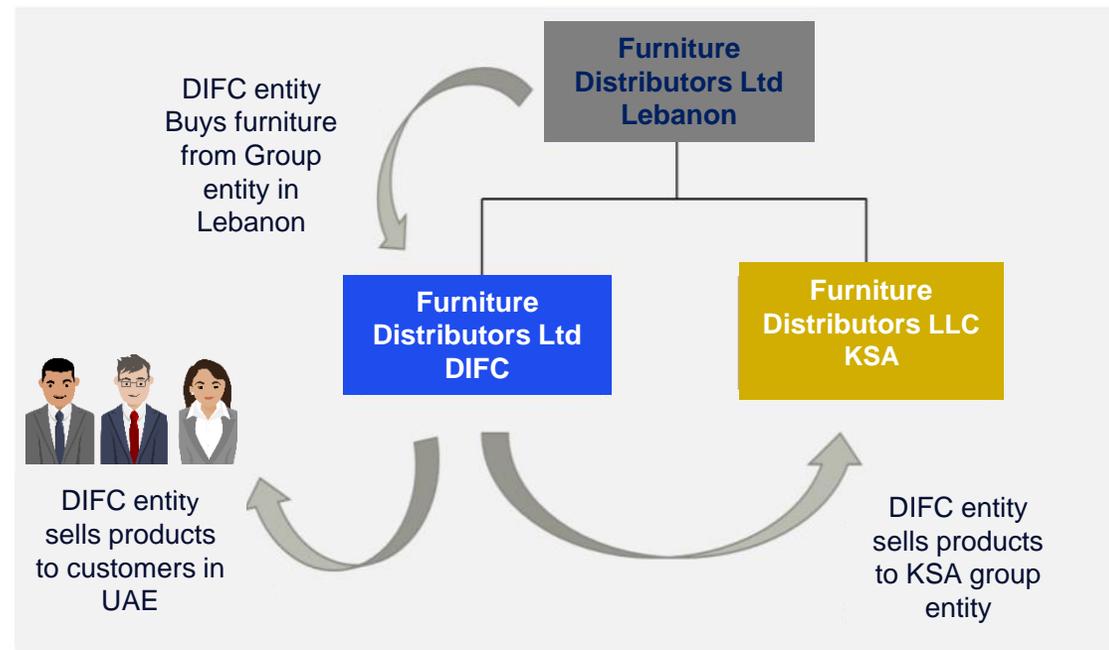
1. Purchases raw materials or finished products from Foreign Connected Person (foreign group company); **and**
2. Re-sells / distributes raw materials or products in UAE or outside UAE

\*Licensees purchasing / distributing goods to **third parties only**, do **not** engage in Distribution Business

\*Licensee would not be required to demonstrate economic substance if they can prove that the transaction was not in its ordinary course of business (e.g. a one-off transaction) and was charged at cost or less

\*Goods no longer required to be imported or stored in UAE

### Example



# Changes to Relevant Activities

## Spotlight on Distribution & Service Centre Business

### Distribution and Service Centre Business

Two distinct activities, covered under one “Relevant Activity”

### Service Centre Business

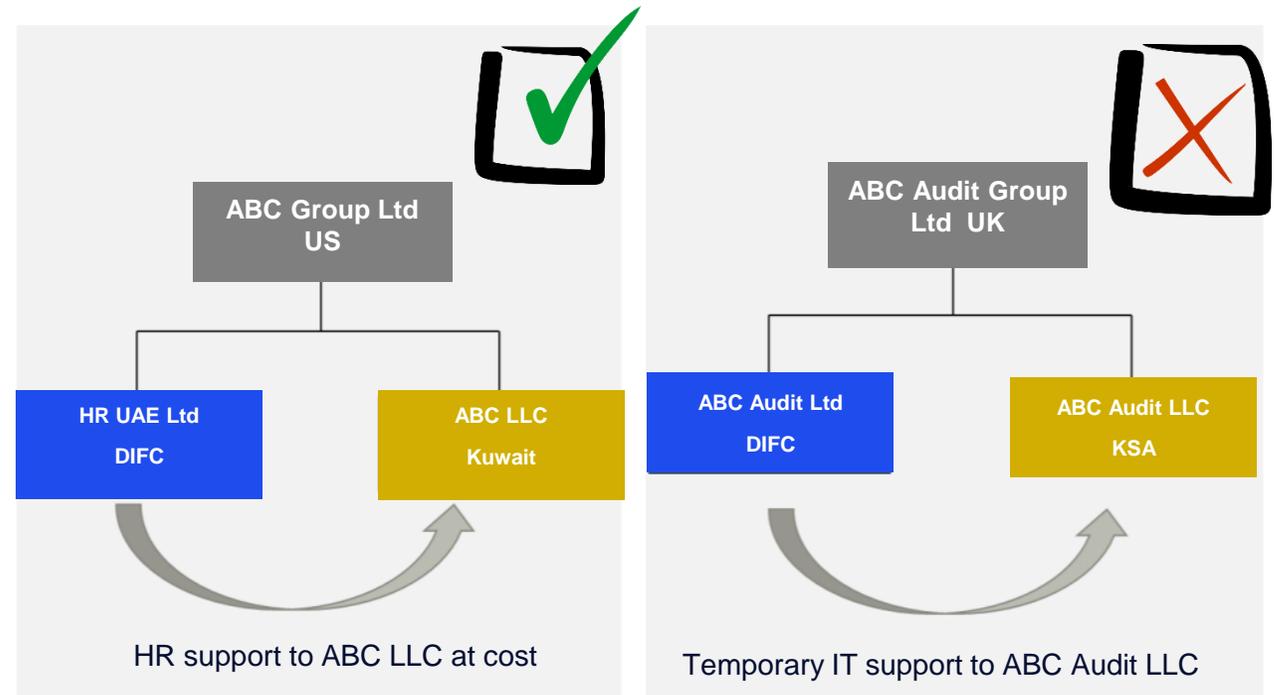
- Broad scope (e.g. consulting, administrative, other services)
- Requires Services to be provided to a Foreign Connected Person
- Previous requirement for connection with a business outside the UAE **removed**

\*Licensee engages in a “Service Centre Business” if it provides consulting, administrative or other services to a foreign group company in ordinary course of business

\*Licensees providing services to **third parties only**, do **not** engage in Service Centre Business

\*One off transactions charged at cost or less **excluded**

### Examples

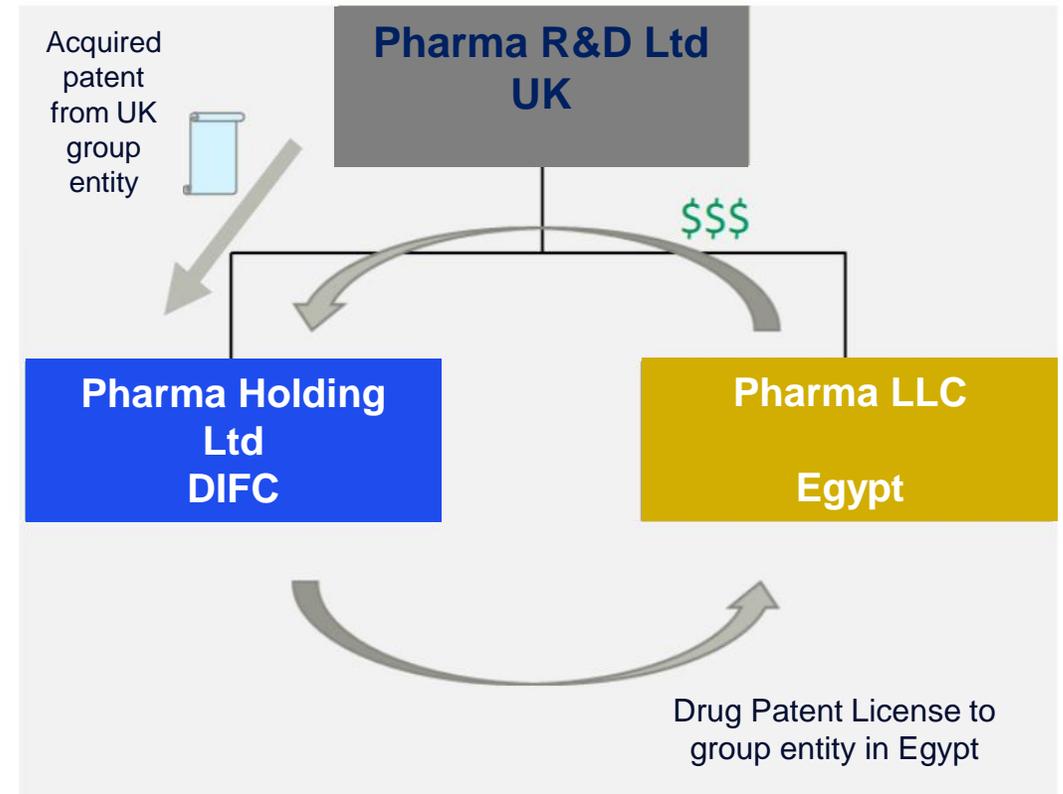


# Changes to Relevant Activities

## High Risk IP Business – Increased Substance

- Limited to Intellectual Property (IP) Business that meets all the following conditions:
  - Did not create IP assets which it holds for its business;
  - Acquired IP assets from:
    - i. A Connected Person; or
    - ii. In consideration for funding R&D by a person outside UAE; **and**
  - Licenses or sells IP asset to Connected Person(s), or earns separately identifiable income from a Foreign Connected Person in relation to the use or exploitation of the IP asset.

## Example



# Clarification of terms

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## Licensee

- a juridical person (legal person incorporated in the UAE or elsewhere); or
  - an unincorporated partnership
- that carry on a Relevant Activity in the UAE

## Relevant Income:

“All **gross income** from a Relevant Activity that is recorded in the books and records of the Licensee or Exempted Licensee under applicable accounting standards”

➤ **Gross income** is defined in the **Guidance to** mean “*all income from whatever source derived, including revenues from sales of inventory and properties, services, royalties, interest, premiums, dividends and any other amounts, without deducting any type of costs or expenditure*”

\*Does not mean taxable or accounting income, or profit.

## Connected Person

“An entity that is part of the **same Group** as the Licensee or the Exempted Licensee”

## 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 applicable accounting standards”

# Impact of COVID-19

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## MOF Circular on COVID-19

- MOF issued a [circular](#) on COVID 19 in (extract below):
- Impact of CoVID-19 will be considered in determining whether the Economic Substance Test was met, particularly in relation to the directed and managed test

In this regard, the UAE MoF would like to confirm that the UAE will take into consideration the impact of COVID-19 on usual operations of Licensees when making a determination of whether or not a Licensee has demonstrated sufficient economic substance in the UAE. These considerations would only apply with respect to those substance requirements that are directly affected by COVID-19 measures (e.g. travel restrictions, self-isolation situations or quarantine requirements). In particular, consideration will be given to the impact of restrictions on the ability of Licensees to meet the requirements of the directed and managed test. Businesses should give consideration to the ability to appoint alternate directors in the UAE who can attend meetings in the UAE and thereby address any short-term practical difficulties arising from COVID-19 related measures.



# 05

## Impact of Changes

# ESR Roles & Responsibilities



Licensees

Regulatory Authorities

National Assessing Authority

Competent Authority

- Submit timely and accurate
  - ESR Notifications
  - ESR Reports
 on MOF Portal with relevant supporting documentation
- Respond to information requests

- DIFC ROC designated as Regulatory Authority in DIFC
- Verify information submitted by DIFC Entities in the Notification and Report
  - Ensure exemptions are properly applied
  - Assist FTA in its role

- Federal Tax Authority is the National Assessing Authority:
- Assess ESR Reports
  - Determine if Licensee met the ES Test
  - Issue administrative penalties for non-compliance
  - Hear and decide on appeals
  - Share information with MOF

- Ministry of Finance is the Competent Authority:
- Issue decisions to implement ESR
  - Develop ESR Portal for the filing of all Notifications and Reports
  - Exchange information with Foreign Competent Authorities (where ES test not met or for High Risk IP)

# What do DIFC Licensee need to do?

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## Ministry of Finance Portal

### General Rule for 2020 reportable period submissions going forward:

- **Notifications** must be filed on the MOF Portal within 6 months of Financial Year End
- **Reports** must be filed on the MOF Portal within 12 months of Financial Year End

### For re-submissions for reportable period submissions covering 2019 reportable periods:

- All DIFC entities that conducted a relevant activity (including Exempted Licensees) are expected to **register** on the MOF Portal and **resubmit** their ESR **notification**
- DIFC entities that conduct a relevant activity with a Financial Year Ending by **30 June 2020**, will need to file a **Notification** by 31 Dec 2020 (even if exempt)
- DIFC entities that conducted a relevant activity and earned income during the reportable period ending on or before **31 Dec 2019** are **also** required to file an **ESR Report** by 31 Dec 2020 (unless it is an exempted licensee)
- DIFC branches with a UAE parent / head office should **not** file. The UAE parent / Head office must file Notifications and Reports (if applicable) for itself and all branches
- MOF ESR Portal is expected to be ready **1<sup>st</sup> week of December 2020**

# What do DIFC Licensee need to do?

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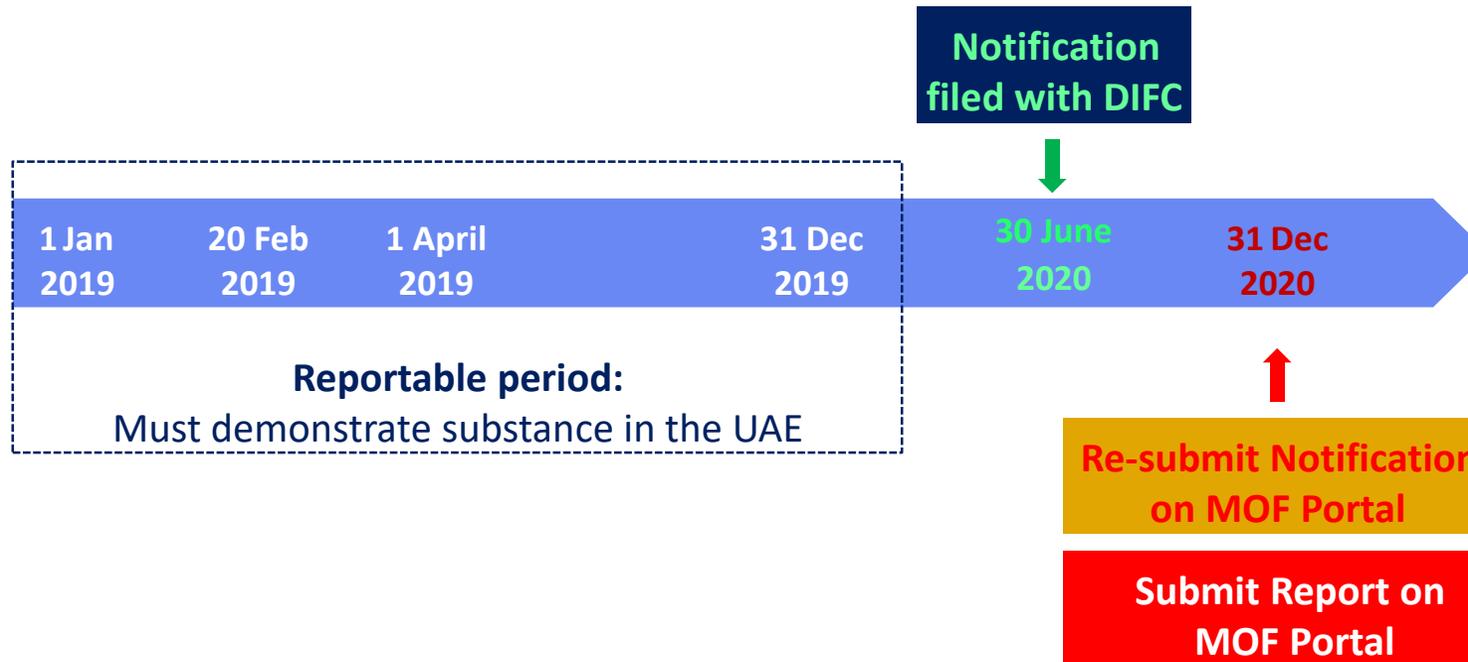
## Ministry of Finance Portal

- Three (3) key considerations:
  - ✓ Relevant Activities
  - ✓ Exemptions (if any)
  - ✓ Reportable Period
- Also, please note that these deadlines, definitions, guidance and regulations are set by MOF.
- *DIFC therefore cannot amend or change deadlines, provide prior confirmation of what type of business or activities an entity conducts, or make changes to the ESR regulations.*

# Illustrative Timeline - 1

*Example #1:*

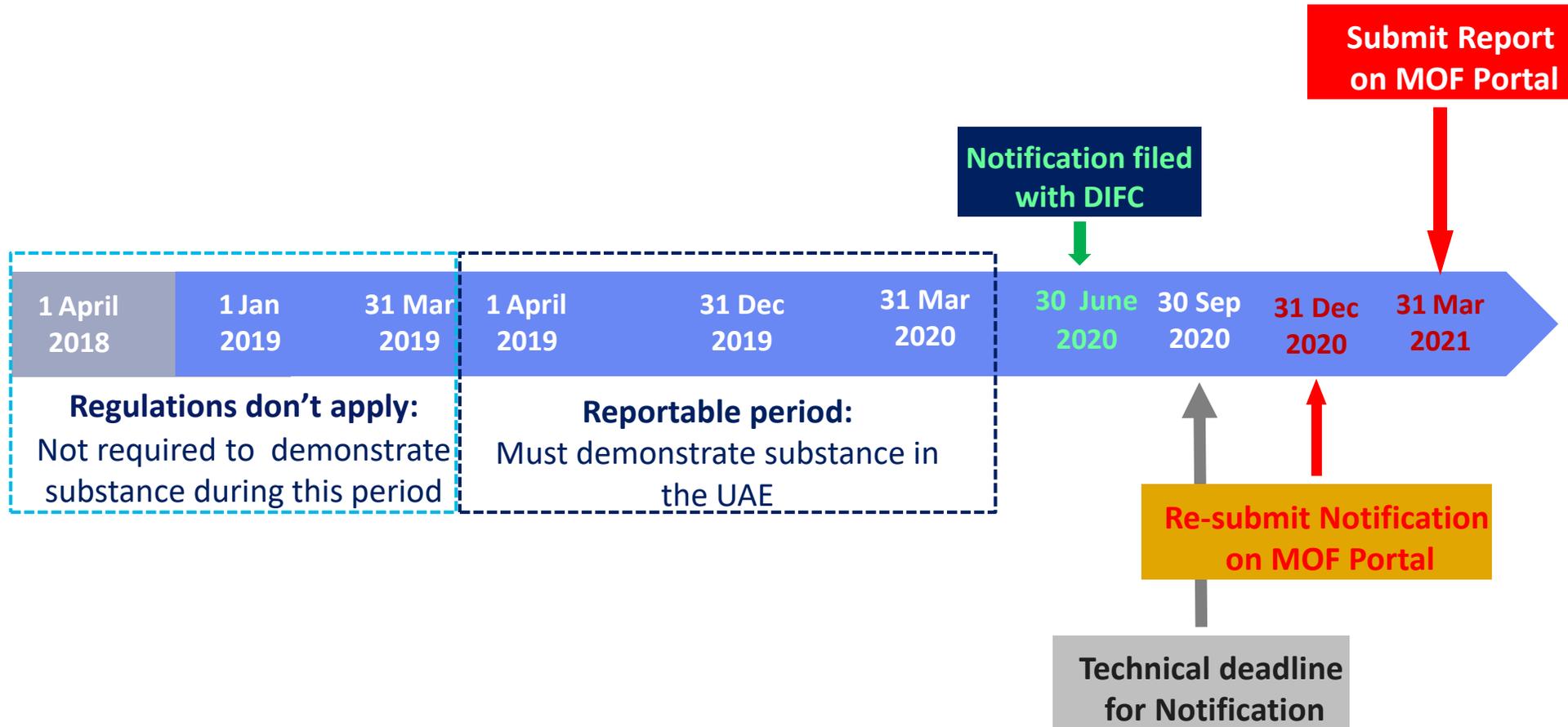
*An existing company with 1 January - 31 December financial year*



# Illustrative Timeline - 2

Example #2:

An existing company with 1 April - 31 March financial year





# 06

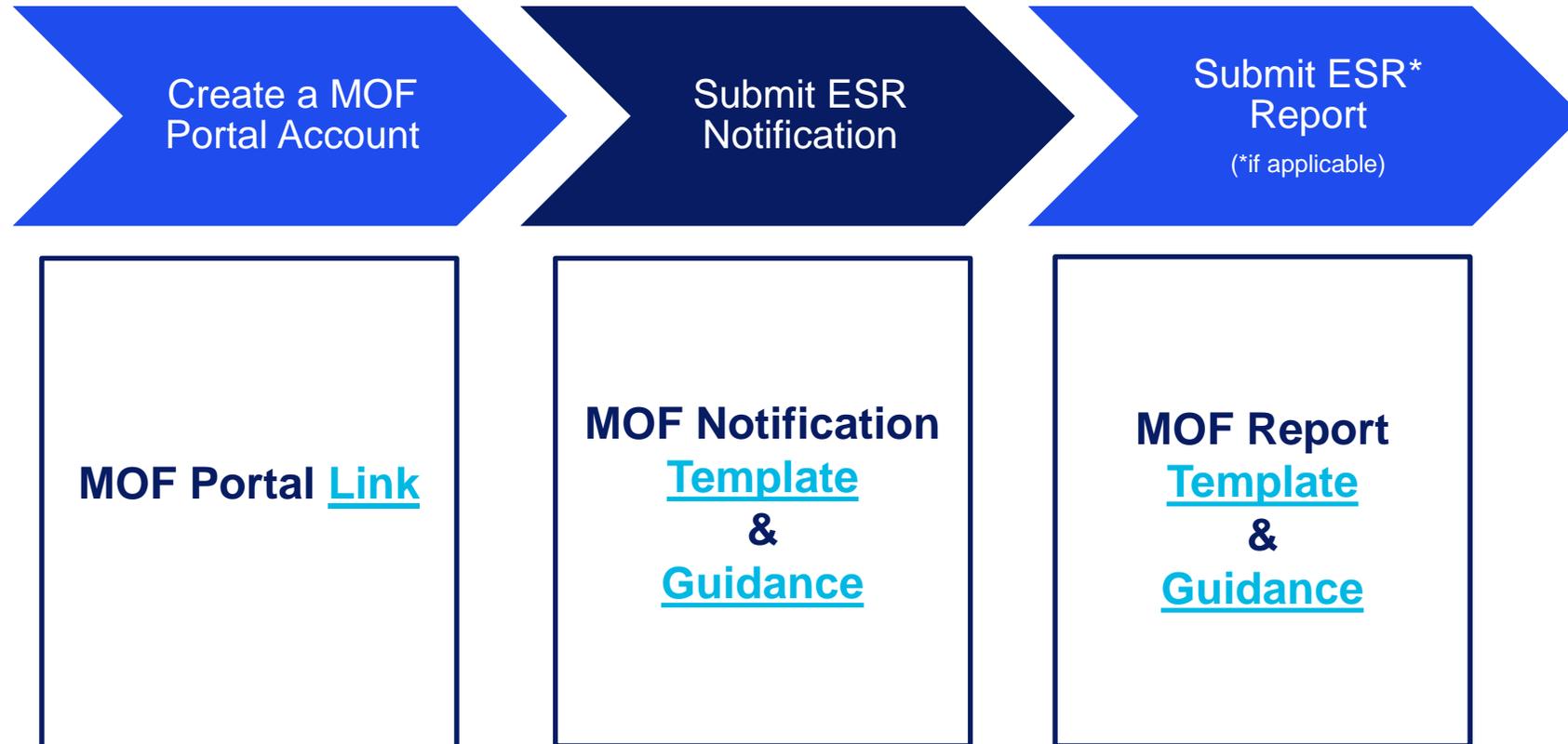
**Next steps and filing on the MOF Portal**

# Filing Notification and Report

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Last Date to Re-Submit Notifications / Submit Reports  
(where required): December 31, 2020\*

(\*For relevant reportable periods)



# Dashboard and MOF Portal

## Step 1

Login

user name

password

Remember me

Login

[?Forgot your password](#) [Create a new account](#)



## Step 2

UNITED ARAB EMIRATES  
MINISTRY OF FINANCE

Home Dashboard

Signed in as DEMO Matt Nichols (abc@cbraim.com) Sign out

### Licensee Dashboard - Main Page

Submittals History Send Notification

There are currently no cases to show...

Privacy policy FAQ Helpdesk

nichols

## Step 3

UNITED ARAB EMIRATES  
MINISTRY OF FINANCE

Home Dashboard

Signed in as DEMO Matt Nichols (mni@cbraim.com) Sign out

### Licensee Dashboard - Main Page

Submittals History Send Notification

Licensee	Case Type	Progress Code	Date submitted	Respond	Deadline	
asdasdasd	Notification Form	Request for amendment	11/11/2020		11/18/2020	<a href="#">View Summary</a>
Testing CBUAE	Notification Form	Awaiting Licensee response	11/12/2020	<a href="#">Resubmit</a>	11/19/2020	<a href="#">View Summary</a>
Puma	Notification Form	Awaiting Licensee response	11/11/2020	<a href="#">Resubmit</a>	11/19/2020	<a href="#">View Summary</a>
Adidas	Notification Form	Awaiting Licensee response	11/11/2020	<a href="#">Resubmit</a>	11/19/2020	<a href="#">View Summary</a>



# 07

## Consequences of non-compliance

# Consequences of non-compliance\*

## Penalties for failure to:

<i>(Re)submit Notification (and supporting docs) via MOF Portal by Dec 31, 2020</i>	<i>Submit Economic Substance Report (and supporting docs) by Dec 31, 2020</i>	<i>Demonstrate sufficient Economic Substance in the UAE for each relevant Financial Year</i>	<i>Provide Accurate Information</i>
Penalty of AED20,000	Penalty of AED50,000	Penalty of AED50,000  <b><i>Second consecutive year of failure</i></b> <ul style="list-style-type: none"> <li>▪ Penalty of <b>AED400,000</b>; and</li> <li>▪ Commercial licence could be: suspended, withdrawn or not renewed</li> </ul>	Penalty of AED50,000

\*For certain 2019 reportable periods

Where an entity has:

- not met the Economic Substance Test for a Financial Year or
- where an entity derives income from the IP Assets considered as high risk as part of the IP Business Relevant Activity

MOF shall provide the relevant information about such entity to the Foreign Competent Authority of the country / territory in which the Parent / Ultimate Parent Company and the UBO of the entity resides. (ESR Article 11)



08

Q&A



Dubai International  
Financial Centre

Thank You

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