

28 OCTOBER 2020



**ABU DHABI
GLOBAL MARKET**

*LATEST ESR UPDATES AND
HOW THEY AFFECT ADGM
LICENSEES*

Agenda

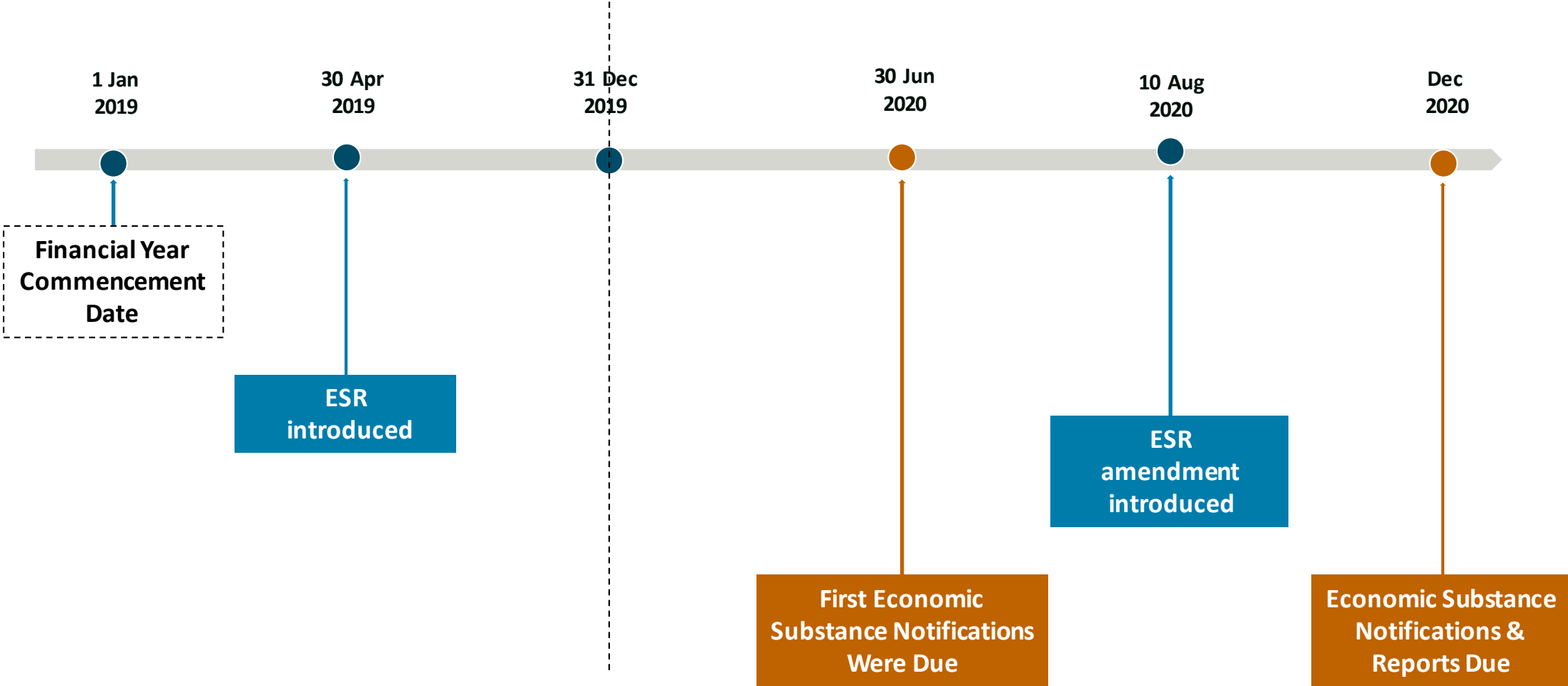
01. Background and feedback on Notifications received in June

02. Overview of the key changes

03. Impact of changes on ADGM Licensees

04. Filing Templates

Background



Feedback on Notifications submitted in June 2020

Positives

- Large number of interactions
- Over 1,000 Notifications received
- Almost 90% submitted on time

Areas of concern

- Designated contact person
- Empty submissions
- Relevant activities
- Late submissions
- Failure to respond to requests for clarification / more information*

2 – OVERVIEW OF THE KEY CHANGES



Key changes following recent amendments

1. Changes to 'In-Scope' entities
 - *Revised definition of 'Licensee' and 'Exempted Licensee'*
 - *Clarification re 'branches'*
2. Amendments to 'Relevant Activities'
 - *'Distribution and Service Centre Business'*
 - *'High Risk IP Business'*
 - *'Holding Company Business'*
3. 'Relevant Income' and other key terms
4. Appointment of UAE Federal Tax Authority
 - *Ongoing roles of Regulatory Authorities and the Competent Authority*
 - *ESR administration and information flow*

Changes to 'In-Scope' entities

Licensee

Either –

- a juridical person (with separate legal personality, incorporated in the UAE or elsewhere); or
- an unincorporated partnership

that carry on a Relevant Activity in the UAE

**Not in Scope:*

- sole proprietors
- trusts
- foundations

Exempted Licensees

- Investment Funds (the fund + any entity through which it invests)
- Licensees that are tax residents outside the UAE
- Wholly UAE resident - owned businesses that -
 - are not part of a multinational group; and
 - only carry out business activities in the UAE
- UAE branches of a foreign company, where Relevant Income is subject to tax in parent company jurisdiction
- Any other Licensee determined to be exempted by the Minister of Finance

****Government owned entities are no longer exempt***

Consequences of being an Exempted Licensee

- ✓ Still required to submit ESR Notification
- x Not required to file an ESR Report or meet the ESR tests

Treatment of branches

UAE branch of a UAE company

Can file a single Notification and ESR Report (if required) consolidating the Relevant Activities of its UAE branches – *regarded as an extension of their 'parent'*

UAE branch of a foreign company

Not required to file an ESR Report or meet the Economic Substance Test *if the Relevant Income of the UAE branch is 'subject to tax' in the foreign/parent jurisdiction*

Foreign branch of a UAE company

UAE company with a foreign branch is not required to report on / consolidate the Relevant Activities of the foreign branch *if the foreign branch is subject to tax on its Relevant Income in the foreign jurisdiction*

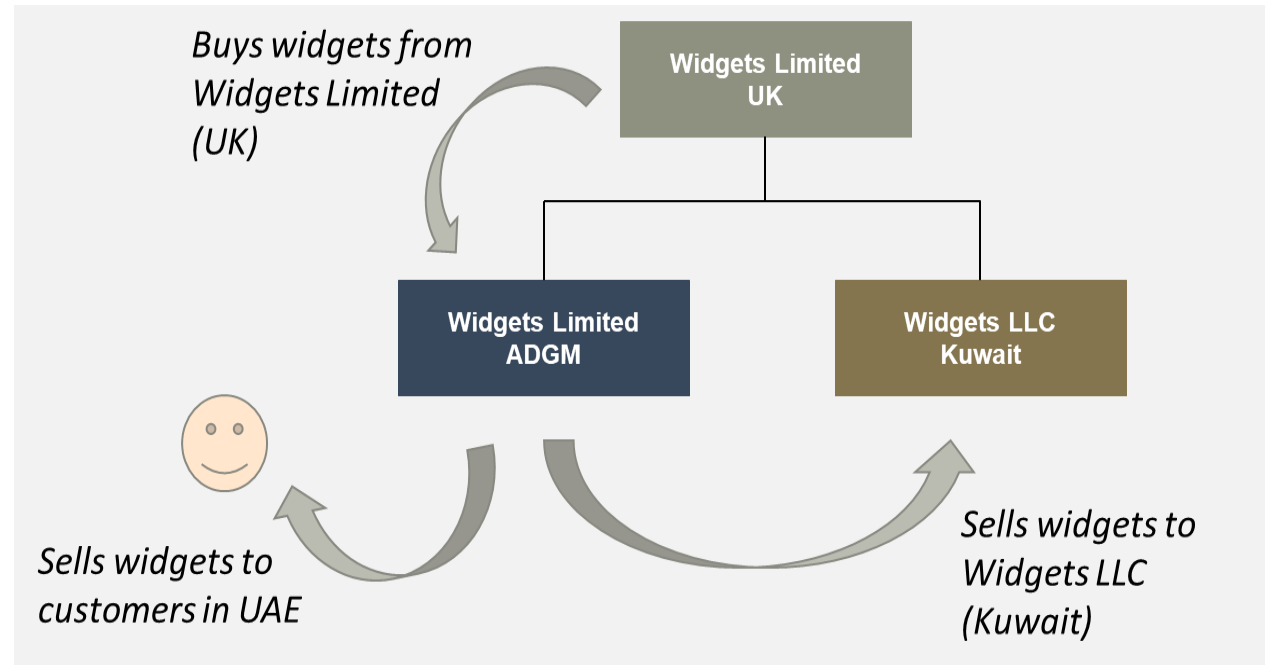
'Relevant Activities' - Distribution Business

Distribution Business

A Licensee is engaged in a 'Distribution Business' if it –

- (a) Purchases raw materials or finished products from a Foreign Connected Person (foreign group company) and
- (b) Re-sells/distributes these raw materials or finished products (in the UAE or elsewhere)

Example



**All examples provided are fictitious*

'Relevant Activities' - Service Centre Business

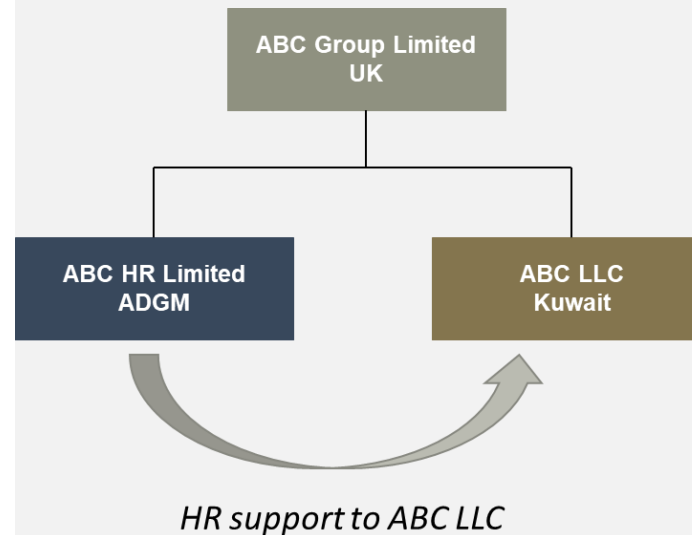
Service Centre Business

A Licensee that provides services to a Foreign Connected Person (foreign group company)

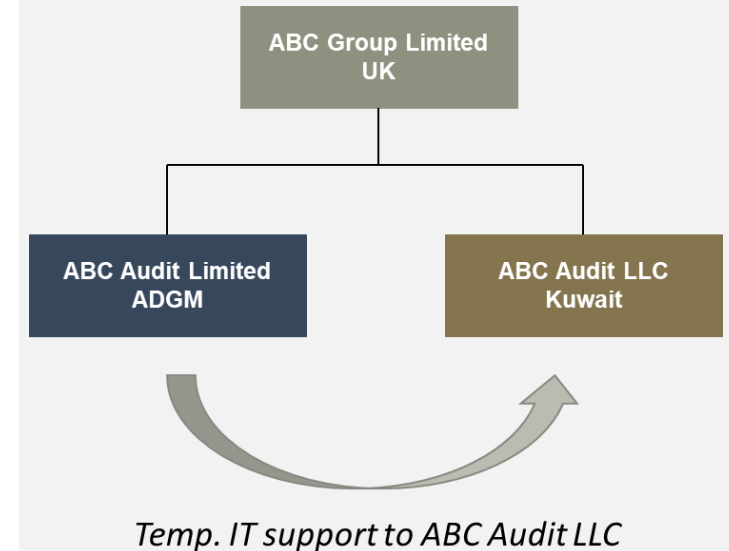
Note - previous requirement that the provision of services be 'in connection with a business outside the State' has been removed

Examples

Service Centre Business



NOT a Service Centre Business



**All examples provided are fictitious*

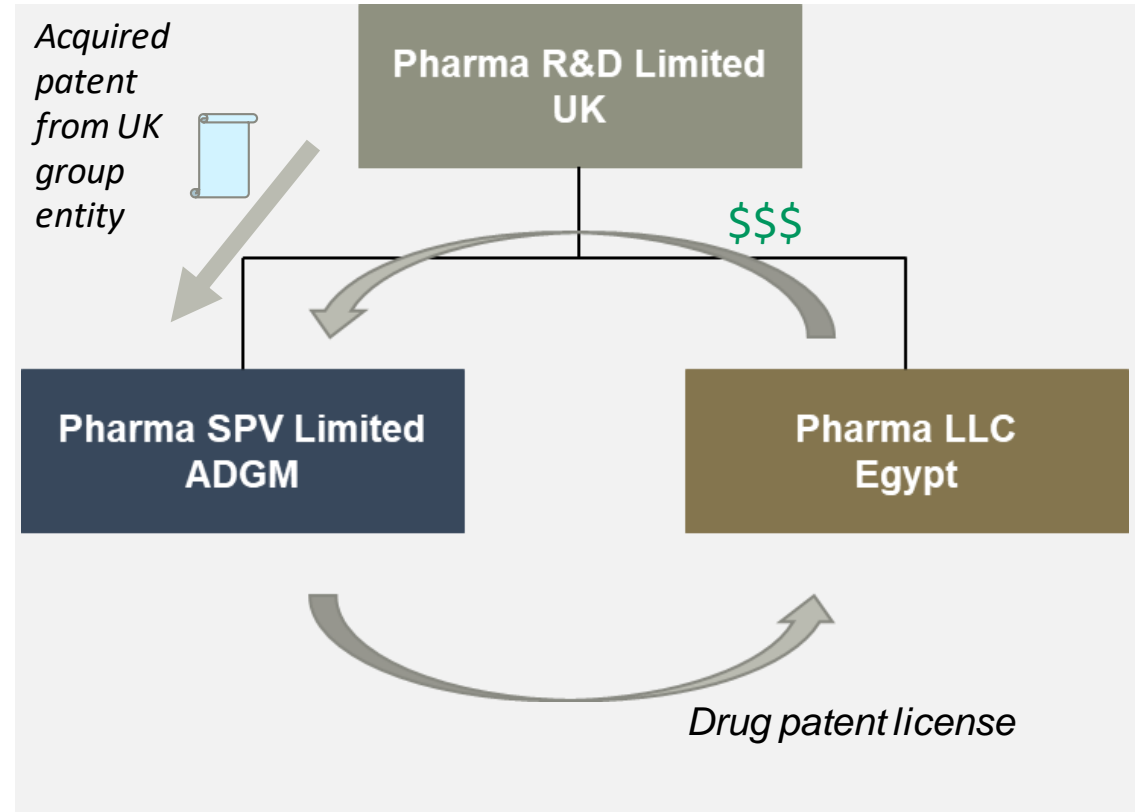
'Relevant Activities' - High Risk IP Business

High Risk IP Business

An Intellectual Property Business that—

- (a) did not create the IP asset which it holds for the purposes of its business;
- (b) acquired the IP asset either from—
 - (i) a Connected Person, or
 - (ii) in consideration for funding R&D by another person situated in a foreign country; and
- (c) licenses or has sold the IP asset to one or more Connected Persons, or otherwise earns separately identifiable income from a Foreign Connected Person in respect of the use or exploitation of the IP asset.

Example



**All examples provided are fictitious*

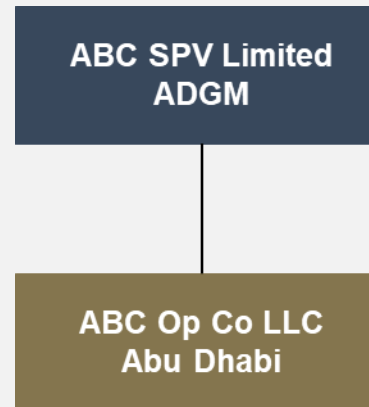
'Relevant Activities' - Holding Company Business

Holding Company Business

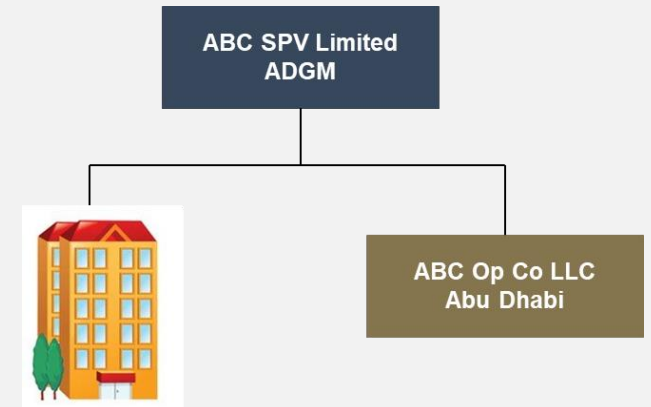
- (a) has as its sole function the acquisition and holding of shares or equitable interests in other companies; and
- (b) only earns dividends and capital gains from its equitable interests.

Examples

Holding Company Business



NOT a Holding Company Business



**All examples provided are fictitious*

Clarification of 'Relevant Income', etc.

'Relevant Income'

Remains defined as: *'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 - Clarified 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

ESR Administration - UAE Federal Tax Authority

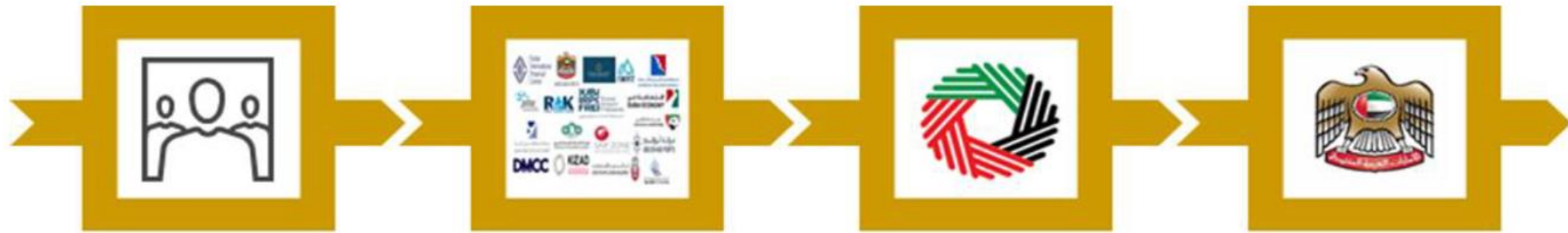
UAE Federal Tax Authority

National Assessing Authority responsible for assessing and enforcing compliance with ESR

Functions:

- ✓ Assessing Economic Substance Reports
- ✓ Determining whether a Licensee satisfies the Economic Substance Test
- ✓ Issuing financial penalties for non-compliance
- ✓ Responding to appeals
- ✓ Sharing information with the UAE Ministry of Finance (Competent Authority)

ESR Administration and Information Flow



Licensees

Regulatory Authorities

Federal Tax Authority

Competent Authority

- Submit timely and accurate Notifications & ESR Reports
- Respond to information requests from the RA and FTA

*(e.g. Articles 6, 8)**

- Collect Notifications & ESR Reports
- Review, assess and validate information
- Identify cases of non-compliance
- Clear ESR Reports for assessment by the FTA

(e.g. Articles 4.2 and 9)

- Assess if a Licensee met the ES Test
- Impose administrative penalties
- Hear and decide on appeals
- Provide information to the MoF

(e.g. Articles 5,10, 13, 14)

- Issue decisions to implement the ESR
- Exchange information with Foreign Competent Authorities (e.g. where a Licensee has not met the ES Test)

(e.g. Articles 11 and 20)

**Examples of the relevant Articles for information flow – firms should be aware of how the whole ESR regime applies to them.*

3 – IMPACT OF THE CHANGES ON LICENSEES (FILING)



Changes to ESR Filing: Requirements & Processes

- All ESR filings* to be submitted via Ministry of Finance (MoF) online portal.
- Licensees who have previously filed are required to re-file via the portal.
- ADGM branches of a UAE registered parent / head office should **not** file. The UAE parent / head office must file as a single Licensee, including all branches, in one filing.

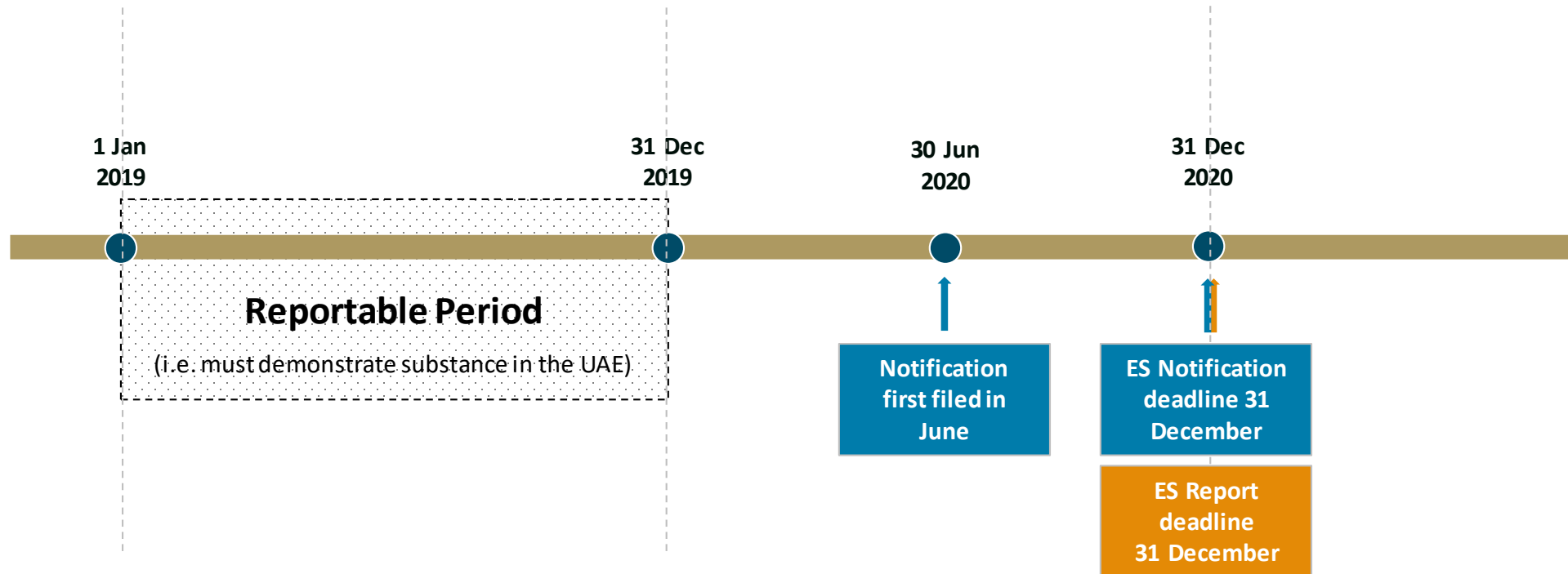
**filing = both Economic Substance Notifications and Reports*

Changes to ESR Filing: Timing

- **Notifications**: must be filed within **6 months** of Financial Year End (Art. 4.4 of Guidance)
- **Reports**: must be filed within **12 months** of Financial Year End (Art. 8.4 of ESR)
- Portal expected to go live: **1st week of December** (updates will be given).

Clarifications concerning filing deadlines (1/3)

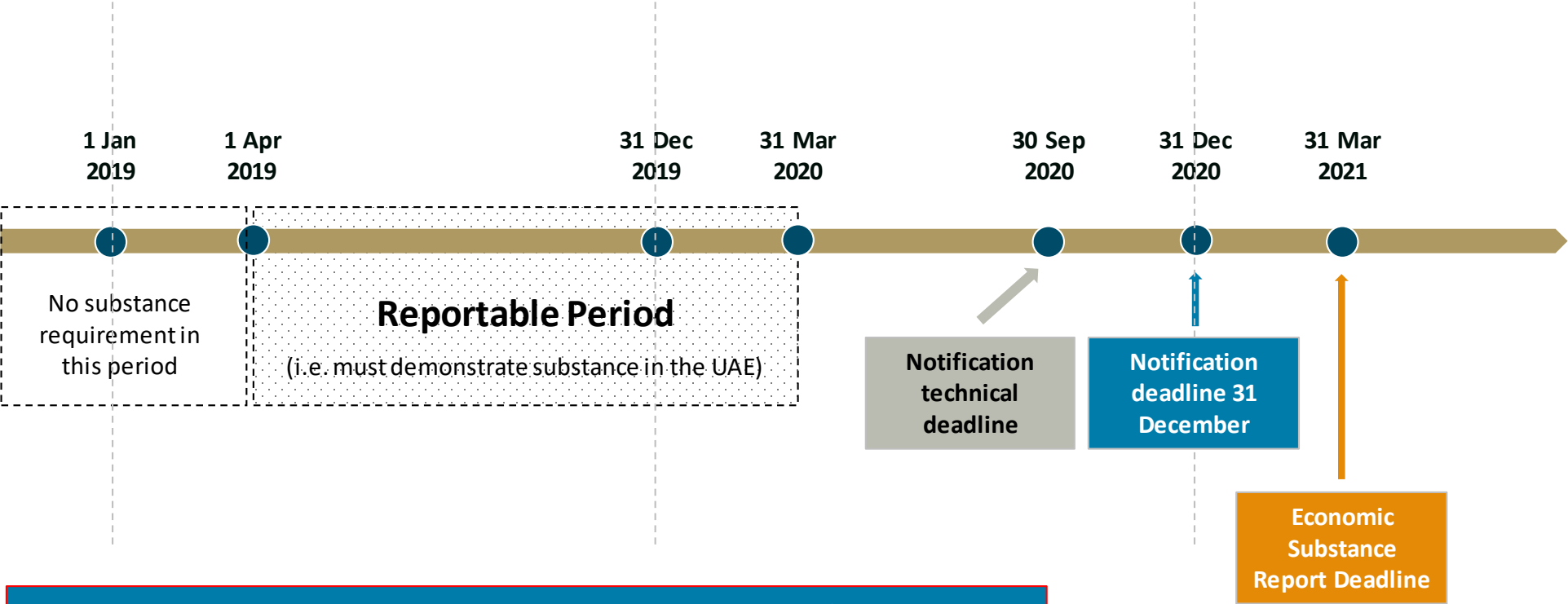
Example #1: Notifications previously filed to be resubmitted when the MoF portal goes live
e.g. Existing Licensee with a 1 January 2019 to 31 December 2019 financial year.



Warning: failure to resubmit notification by 31 December (post portal go live) will result in a penalty of AED 20,000.

Clarifications concerning filing deadlines (2/3)

Example #2: Notifications due before the MoF Portal goes live
e.g. Existing Licensee with a 1 April 2019 to 31 March 2020 financial year.

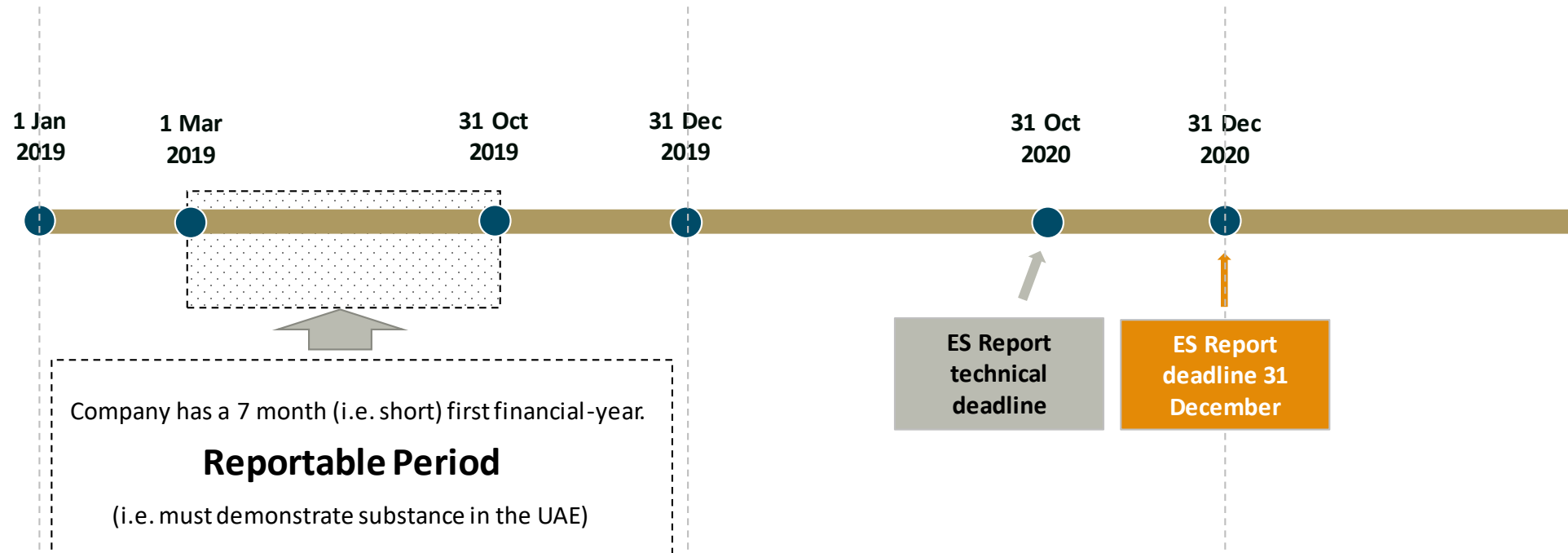


Warning: failure to submit notification by 31 December (post portal go live) will result in a penalty of AED 20,000.

Clarifications concerning filing deadlines (3/3)

Example #3: Reports due before the MoF portal goes live

e.g. New Licensee with a 31 October 2019 financial year.



Warning: failure to submit ES report by 31 December (post portal go live) will result in a penalty of AED 50,000.
Also a deemed failure to meet substance test, which may result in a further penalty of AED 50,000.

Consequences for non-compliance

1

Failure to File

Notification:

**Penalty of
AED 20,000**

Report:

**Penalty of
AED 50,000**

AND

Deemed **failure to
demonstrate economic
substance** in the UAE

2

Failure to provide accurate or complete information

Notification and Report:

**Penalty of
AED 50,000**

AND

Deemed **failure to
demonstrate economic
substance** in the UAE

3

Failure to demonstrate sufficient economic substance in the UAE for the relevant FY

First year of failure:

- Financial penalty of **AED 50,000**; and
- **Information exchange** with foreign competent authority of parent, ultimate parent & UBO.

Second consecutive year of failure:

- Financial penalty of **AED 400,000**;
- **Information exchange** (as above); and
- Possible **commercial licence suspension or withdrawal**.

4 – FILING TEMPLATES



ESR Notification

Information required	Examples of required supporting documents
Licensee Details (name, licence no., address, legal form, VAT tax registration)	<ul style="list-style-type: none">- Trade licence- VAT registration or VAT invoice
Relevant activities (whether earned income, if the income is subject to tax outside the UAE)	<ul style="list-style-type: none">- Trade licence
For IP business, indicate whether you are a high risk IP	<ul style="list-style-type: none">- Provide clarification to RA's enquiries
Ownership information	<ul style="list-style-type: none">- UBO information

ESR Notification - Exemptions

Exemption Categories	Examples of required supporting documents
Investment Fund	<ul style="list-style-type: none">- Statutory documents / information memorandum- Licence (if established in a jurisdiction outside UAE)
Tax residence in a jurisdiction other than UAE	<ul style="list-style-type: none">- Copy of an assessment to corporate income tax, corporate income tax demand, evidence of payment of corporate income tax demand
Wholly owned by UAE residents with domestic transactions only	<ul style="list-style-type: none">- Shareholder register- Structure chart
UAE branch of a foreign entity (head office) the relevant income of which is subject to tax in a foreign jurisdiction	<ul style="list-style-type: none">- Copy of tax return- Copy of any assessment of corporate income tax

ESR Report

Information required	Examples of required supporting documents
Licensee Details (name, licence no., address, legal form, VAT tax registration)	<ul style="list-style-type: none">- Trade licence- VAT registration or VAT invoice
Financial information (are audited financials available, currency used, total revenue for the reportable period, profit/loss, net book value of tangible assets held in UAE)	<ul style="list-style-type: none">- Financial statement / management account
Ownership information	<ul style="list-style-type: none">- UBO information

ESR Report – Financial Information

Information required	Examples of required supporting documents
Relevant income from the relevant activity	- Financial statement / management account
Operating expenditure incurred	- Financial statement / management account
Core income generating activities performed in the UAE	- Financial statement / management account
Expenditure incurred on outsourcing providers in the UAE	- Financial statement / management account

ESR Report – Relevant Activity

Information required	Examples of supporting documents
Total market value of assets under management (Investment Fund Management Business)	- Financial statement / management accounts
Total value of UAE deposits held by the Banking Business for the Reportable Period (Banking Business)	- N/A (self-assessment)
Type of Intellectual Property Asset(s) held by the Licensee (IP Business)	- Financial statement / management accounts

Action: Re-examine whether ESR applies to your firm

- Now (and on a continuous basis):
 - Check the Relevant Activity definitions
 - Check the Exemption categories
- If you are subject to ESR:
 - Start preparing to file the notification and report (unless exempt)
 - Look out for further instructions regarding the MoF portal and go live date

5 – Q&A

