



COMPLYING WITH THE UAE ECONOMIC SUBSTANCE REGULATIONS

On 30 April 2019 the UAE implemented new regulations in respect of trade carried out in the country. All UAE businesses with a current trading license carrying out relevant activities are required to comply with the rules or face substantial penalties.

The change comes in an attempt to comply with an EU clamp down on tax havens which has returned the UAE to a blacklist of states with tax rules that could aid tax evasion in other countries. The rules objected to by the EU include legislation allowing offshore arrangements that attract profits that do not reflect the real economic activity carried out in the country.

Who do the rules affect?

The new regulations apply to all UAE onshore and free zone companies which carry out the following activities, referred to as 'Relevant Activities' in the legislation:

- Banking;
- Insurance;
- Investment fund management;
- Lease financing;
- Distribution and service centers;
- Shipping;
- Holding companies;
- Company headquarters; and
- Intellectual property-related business.

Criteria for compliance – the substance test

To comply with the new rules, those engaged in Relevant Activities must adhere to the following directions to show economic substance in the UAE:

- Conduct their core income-generating activities within the UAE;
- Direct and manage these activities from within the UAE;
- Have an adequate number of qualified, full-time employees based in the UAE;
- Have adequate operating expenditure within the UAE;
- Have adequate physical assets, including premises, in the UAE; and
- Control any activities that are outsourced to third parties.

Complying with the new rules

Companies falling within the parameters of the new rules are now required to file a report alongside their income tax return, giving details of the following:

- Their business type;
- Gross income;
- Amount of operating expenditure;
- Number of qualified employees and number (or equivalent) who work full-time;
- Details of the core-income generating activities carried out by the business;



- Financial statements;
- Details of premises; and
- Details of any outsourcing.

Intellectual property businesses are presumed not to meet the new economic substance criteria unless they can provide evidence to the contrary, so will need to provide further information.

Penalties

Failure to comply can result in fines of up to AED 50,000 in the first year, then AED 300,000 in following years. There is also a risk of loss of trade license. The Ministry of Finance has the authority to report non-compliance to a company's foreign regulators.

Running a UAE-based business

Under the new rules, a company's managing director or one of the key members of the management team needs to be based in the UAE, operating there full-time and carrying out the specific 'Relevant Activity'.

Board meetings need to take place in the UAE on a regular basis, and employees must be based within the country. It is possible to outsource to locally-based workers, but evidence will need to be provided showing that the company has full control over the service.

At Beyond-Legal, we can give advice regarding structuring a business in compliance with the new regulations. Our UAE-based legal consultants also offer a non-executive directorship service, providing advice and oversight to companies operating and generating income within the UAE.

To speak to one of our business experts, please ring us on +971 (0) 56 678 5251 or +971 (0) 58 587 9663.