



Economic Substance Requirements

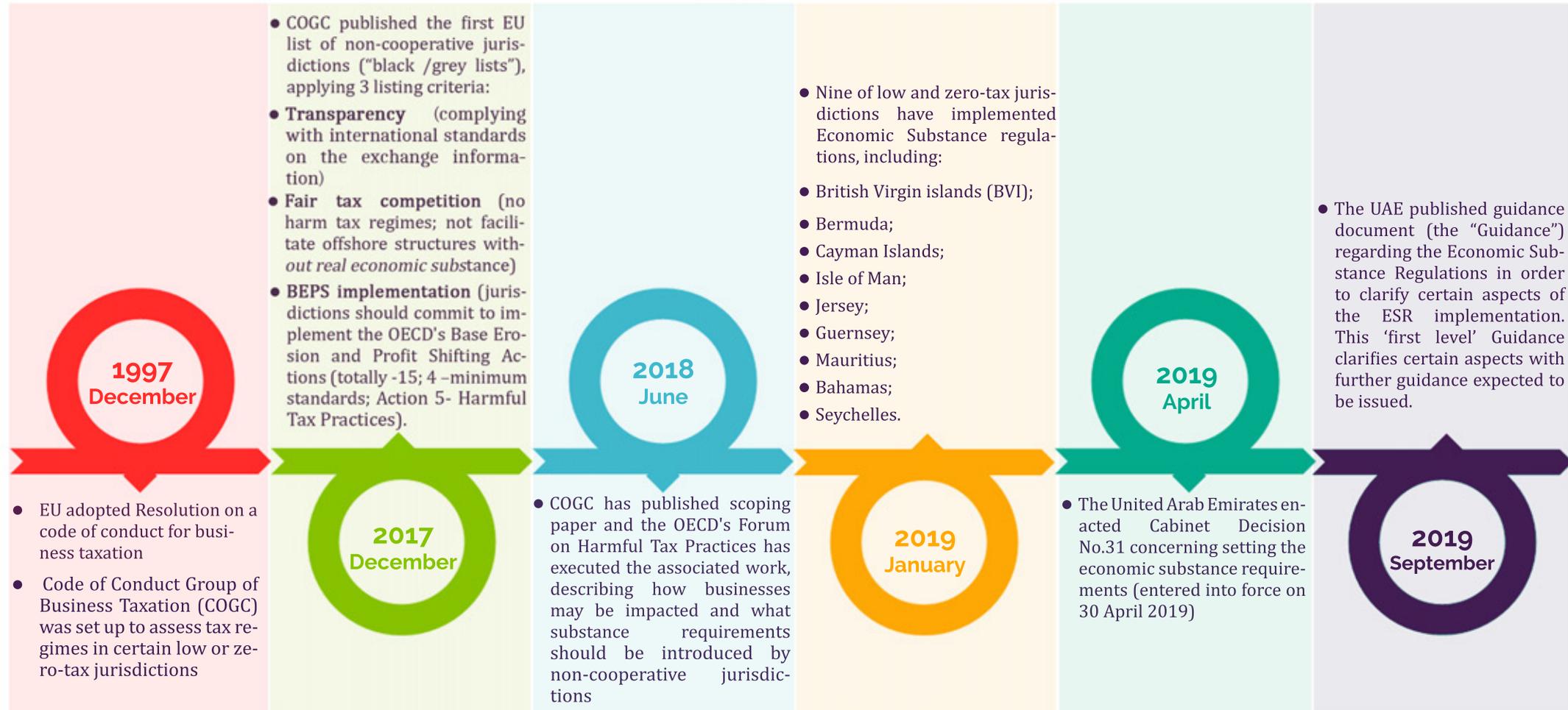
In the United Arab Emirates

 **SAIF** CHARTERED
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Economic Substance regulations in the UAE:

Implementation Process



On 10th October, 2019 EU agreed to remove UAE from list of “non-cooperative jurisdictions”

UAE was initially placed on the EU black list

following commitments to take appropriate measures against the above criteria, the EU transferred the UAE to the EU grey list

due to non-compliance COGC criteria, the UAE was subsequently put back on the black list

“Watch list”: UAE legal framework was in line, except few “technical points” to be resolved

Any UAE entity that undertakes
“Relevant Activities”

- Banking
- Insurance
- Investment fund management
- Lease finance
- Headquarters
- Shipping
- Holding companies*
- Intellectual property
- Distribution and service centers

3-Level ESR Test

- “Directed and managed” Test
- “Core Income Generating Activities” Test (CIGA)
 - “Adequate” Test

Directed and Managed Test

The entity will need to be directed and managed in the UAE with regards to the relevant activity

- at least 1 board meeting in a financial year must be held in the UAE
- quorum of directors physically present
- minutes of the board meetings kept inside the jurisdiction (Registered office address)

CIGA Test

The entity will need to demonstrate that the relevant CIGAs have been undertaken in the UAE

- **Banking** - raising funds, managing risk including credit, currency and interest risk; taking hedging positions; providing loans, credit or other financial services to customers; managing capital and preparing reports to investors or any government to the supervision or regulation of such business.coordinating group activities.
- **Insurance** - predicting and calculating risk; insuring or re-insuring against risk and providing Insurance Business services to clients; Underwriting insurance and reinsurance.
- **Investment fund management** - taking decisions on the holding and selling of investments; calculating risk and reserves; taking decisions on currency or interest fluctuations and hedging positions; preparing reports to investors or any government to the supervision or regulation of such business Licensee that is regarded as a High Risk IP Licensee
- **Lease finance** -agreeing funding terms; identifying and acquiring assets to be leased; setting the terms and duration of any financing or leasing; monitoring and revising any agreements; managing any risks

Adequate Test

The entity will need to have an adequate number employees, expenditure and physical presence in the country

- an adequate number of qualified employees in the UAE
- incur adequate expenditure in the jurisdiction
- have adequate physical presence in the country
- a separate guidance will be issued to clarify any expression or concept covered by the law, including the meaning of 'adequate'

Directed and Managed Test

The entity will need to be directed and managed in the UAE with regards to the relevant activity

- frequent board meetings
- quorum of directors physically present
- minutes of the board meetings kept. inside the jurisdiction (Registered office address)

CIGA Test

The entity will need to demonstrate that the relevant CIGAs have been undertaken in the UAE

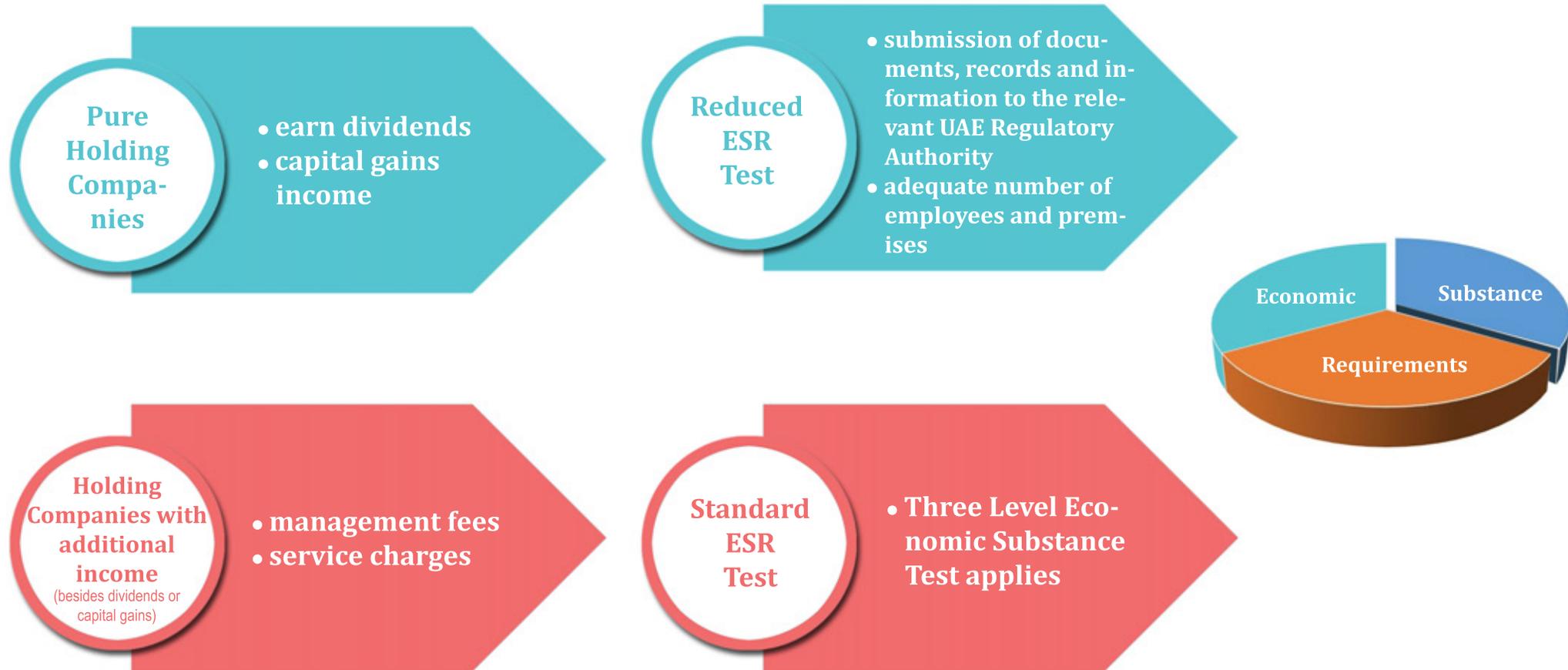
- **Headquarters** - taking relevant management decisions; incurring operating expenditures on behalf of group entities; coordinating group activities.
- **Shipping** - managing crew; overhauling and maintaining ships; overseeing and tracking shipping; determining what goods to order and when to deliver them, organizing and overseeing voyages
- **Intellectual property** - where the Intellectual Property Asset is 1) a patent or an asset that is similar to a patent, research and development; 2) non-trade intangible (including a trademark), branding, marketing and distribution; if the Relevant Activity is conducted by a Licensee that is regarded as a High Risk IP Licensee
- **Distribution and service centers** -transporting and storing component parts, materials or goods ready for sale; managing inventories; taking orders; providing consulting or other administrative services
- **Holding companies***

Adequate Test

The entity will need to have an adequate number employees, expenditure and physical presence in the country

- an adequate number of qualified employees in the UAE
- incur adequate expenditure in the jurisdiction
- have adequate physical presence in the country
- a separate guidance will be issued to clarify any expression or concept covered by the law, including the meaning of 'adequate'

ESR for UAE Holding Companies



Consequences of failure to comply

1st Year

- AED 10,000 - 50,000 penalty



2nd Year

- AED 50,000 - 300,000 penalty



3rd Year

- suspension
- revocation
- non-renewal of the license



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Thank you

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