



Extension of economic substance measures in Guernsey to partnerships

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In line with commitments made by the States of Guernsey to the EU Code of Conduct Group (Business Taxation) in 2018, The Income Tax (Substance Requirements) (Implementation) Regulations, 2021 (the “**Substance Regulations**”) were passed on 15 June 2021, the provisions of which extend the scope of Guernsey’s existing substance regime to Guernsey resident partnerships. Partnerships that are funds are predominantly out of scope, but the activities of the general partner may require substance.

All types of partnerships are potentially within scope of the Substance Regulations to the extent that they derive gross income from certain specified activities, including general partnerships, limited partnerships and limited liability partnerships. Foreign partnerships formed outside of Guernsey may also be required to comply to the extent they have their place of effective management in Guernsey and carry on business activity on the island. The measures do not affect the tax transparency of partnerships.

The “attribution” regime whereby partners in partnerships that conduct relevant activities were obliged to comply with substance requirements in respect of relevant activities carried on by partnerships in which they participate as partners, has been withdrawn. Instead, subject to available exemptions, all partnerships conducting relevant activities are expected to be required to report directly to the Guernsey Revenue Service for those activities, in the same way that companies do, and will be required to produce evidence of compliance with the Substance Regulations. The income generating activities which trigger the application of substance requirements to partnerships are the same as those for companies: fund management, distribution and service centres, shipping, headquartering, insurance, banking, pure equity holding

activity and intellectual property asset holding. The economic substance test will look at the activities of the governing body of the partnership. In the case of limited partnerships, it will be the activities of the general partner that are key.

Registration and filings

Bringing partnerships under the Substance Regulations has necessitated certain reporting changes for all partnerships. As these entities are tax transparent, there has historically been no obligation on partnerships to report to the Guernsey Revenue Service. However, all partnerships including relevant foreign partnerships will now need to register with the Revenue Service, whether in scope for substance purposes or not. The Form 715 for registration purposes is available through this link: [CHttpHandler.ashx \(gov.gg\)](#). Enhanced financial penalties may apply for certain partnerships that have failed to register.

All partnerships will also need to confirm on an annual basis, whether the economic substance requirements apply to them. Partnerships will be obliged to file online returns together with financial statements. The Guernsey Revenue Service has confirmed that the economic substance return for partnerships is expected to be substantially similar to the substance return applicable to companies and that the deadlines will be aligned with those applicable to companies. The sanctions applicable to companies for failing to comply with economic substance requirements are also now extended to partnerships, with suitable modifications.

Transitional arrangements

Partnerships in existence at 30 June 2021 have the benefit of a transitional arrangement and are obliged to report to the

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Guernsey Revenue Service as to substance in respect of accounting periods commencing on or after 1 January 2022. Partnerships formed on or after 1 July 2021 are obliged to comply from the date of formation where they conduct activities that bring them within the scope of the substance regime.

Place of effective management

In determining whether a foreign partnership has a “place of effective management” in Guernsey, the Guernsey test is based on the test for non-individuals in the OECD Model Tax Convention and commentary thereon. The “place of effective management” under the Substance Regulations is the place “where the management and commercial decisions necessary for the conduct of the business as a whole of that person are substantially made having regard to all relevant facts and circumstances”. It is therefore important for partnerships to understand where their place of effective management is, as well as assessing if the partnership is carrying on any in scope activities. In the context of limited partnerships, it is likely that the place where the general partner conducts business will be the place of effective management of the limited partnership itself.

The economic substance test

A resident partnership will meet the economic substance test in relation to a relevant activity if: (a) it is directed and managed in Guernsey, meaning in summary that its governing body meets in Guernsey at an adequate frequency with a majority physically present at those meetings, records are kept of the strategic decisions at those meetings and passed by members who have the necessary knowledge and expertise to do so, and all records are kept in Guernsey; (b) it has adequate levels of people, expenditure and assets in Guernsey; and (c) all core income-generating activities are carried out in Guernsey (and to the extent outsourced to another person in Guernsey the partnership is able to monitor and control those activities).

Exemptions

Partnerships which are collective investment vehicles are outside the scope of the Substance Regulations unless they are self-managed. Funds structured as partnerships are mostly limited partnerships and as such, will not be self-managed because the general partner (not the partnership) is responsible for fund management. In such structures, the corporate general partner is responsible for compliance with substance requirements where it derives gross income in respect of its relevant activity of fund management.

Other exemptions include:

- Partnerships comprised solely of individual partners subject to income tax in Guernsey on their share of the profits of the partnership;
- Partnerships that are wholly domestic, that is, where a partnership substantially carries on its activities within Guernsey, and is not consolidated (for financial reporting purposes) as part of a multi-national group; and
- Partnerships where the place of effective management is in a qualifying jurisdiction outside of Guernsey. The term “qualifying jurisdiction” means one where (a) the

partnership is subject to substance requirements substantially similar to those in the Substance Regulations, or (b) the highest rate of tax on the income of any person in that jurisdiction is at least 10%.

Penalties

If a breach is determined for a financial period, the resident partnership is liable to a fine for that period not exceeding £10,000 and may be at risk of being struck off the register held by HM Greffier (where applicable). The Guernsey Revenue Service has powers to impose substantial financial penalties if a breach occurs in a financial period where the partnership has received prior notices. In respect of any breach, the Guernsey Revenue Service will also be required (subject to limited exceptions) to exchange the information received with relevant competent authorities in relevant jurisdictions. Additional penalties will apply to those who provide false or misleading information, or obstruct the Guernsey Revenue Service.

Industry implications

General partners will need to differentiate between the various capacities in which they act carefully in managing filing obligations and compliance with on-going obligations.

Given the complexities, service providers and managers looking after partnerships are encouraged to consider the implications of these changes promptly, rather than at the time of submission of the relevant returns. In larger structures such as those seen in the private equity space, some involved analysis as to the availability of exemptions will need careful consideration, particularly in the context of limited partnerships and limited liability partnerships.



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