

## GSCCA Circular 18

11 May 2021

### **Changes to economic substance regulations in respect of partnerships**

Economic substance requirements that apply to companies will be extended to partnerships. The reason is to fully meet commitments the States of Guernsey gave to the EU Code of Conduct Group (Business Taxation) in 2018.<sup>1</sup>

The term “partnerships” includes:

- General partnerships formed in Guernsey
- Limited partnerships (both with and without legal personality) formed under the Limited Partnerships (Guernsey) Law, 1995
- Limited liability partnerships formed under the Limited Liability Partnerships (Guernsey) Law, 2013
- Foreign partnerships (including limited partnerships and limited liability partnerships) formed outside of Guernsey which have their place of effective management in Guernsey and carry on business activity in Guernsey.

These requirements will come into force for accounting periods commencing on or after 1 January 2022 for partnerships existing as at 30 June 2021. New partnerships (being those partnerships formed on or after 1 July 2021) will be in scope for accounting periods commencing on or after 1 July 2021.

The economic substance framework will apply to all partnerships carrying on a relevant activity, other than where it can be demonstrated to the Code Group and EU Member States that risks do not exist. The following exemptions are currently under discussion with the EU Commission:

- Partnerships that are comprised solely of individual partners – where all the income of the partnership will be subject to personal income tax in Guernsey.

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<sup>1</sup> Text of a Code Group report to ECOFIN (The Council of European Finance Ministers) 20/11/20:

*“46. The Member States concluded that Anguilla, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man and Jersey should extend their economic substance requirements to all relevant partnerships which were identified to fall out of the scope of existing legislation.*

*47. It was also agreed that without this was already covered by the commitment of the jurisdictions concerned to comply with the scoping paper for criterion 2.2. and a new commitment was not required. The following timeline should apply to the relevant jurisdictions to adopt and put into effect the necessary amendments to their legal framework so that this could be taken into account in the October 2021 listing update:*

- a) by 30 June 2021 for the adoption of necessary amendments;*
- b) by 1 July 2021 for the entry into force with a maximum 6-month transition period for existing entities.”*



- Partnerships that are wholly domestic – where a partnership is neither conducting activities outside of Guernsey, nor part of a group of multinational enterprises, and as such it can be considered to be wholly domestic.
- Partnerships with a nexus (place of effective management) in another jurisdiction – the economic substance regime for companies is applied to those companies that are tax resident in Guernsey. As there is no international concept of tax residence for partnerships, an approach is being developed that, if considered to be sufficiently robust, would lead to a similar outcome.

Collective investment schemes regulated by the GFSC under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 are out of scope.

Any person who is a partner of a partnership carrying on a relevant activity is not required to meet the economic substance requirement in respect of the partnership (i.e. the economic substance requirements will be considered at the level of the partnership).

These economic substance developments will require some changes to the reporting requirements of partnerships, which will include:

1. A requirement for all partnerships (including relevant foreign partnerships) to register with the Revenue Service.
2. An annual filing requirement for all partnerships confirming whether they need to file economic substance information.
3. The tax return filing deadline will coincide with the annual tax return filing date for companies.
4. Mandatory online filing of partnership tax returns, accompanied by financial statements.

The economic substance return for partnerships would be substantially similar to the economic substance return for companies. Existing sanctions for failing to comply with economic substance requirements would also be extended to partnerships (with relevant adaptations).

An industry working group has been formed to provide feedback on the draft legislation.

The Revenue Service is also working closely with the tax authorities in the other Crown Dependencies on these changes.

Further information and guidance on the economic substance requirements as they apply to companies can be found at [www.gov.gg/economicssubstance](http://www.gov.gg/economicssubstance). More information on the extension to partnerships will be added to this page in due course.

N Forshaw

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