



ADVISORY  
Industry Information

## Guernsey Update: New Plans for Bringing Partnerships in Scope of Economic Substance Rules

May 2021

The States of Guernsey's Revenue Service has issued further details of the proposals to bring partnerships into scope of economic substance requirements for accounting periods commencing on or after 1 January 2022, although partnerships formed on or after 1 July 2021 will be in scope immediately on formation where they conduct activities that trigger economic substance requirements.

These further details were contained in GSCCA Circular 18 issued on 11 May 2021 and the extension of economic substance requirements to partnerships is being implemented in Guernsey, as well as the other Crown Dependencies and the Overseas Territories, pursuant to commitments to adopt economic substance requirements made to the EU Code of Conduct Group on Business Taxation.

These changes will be most relevant to the funds industry in Guernsey, as a number of carried interest, co-investment, and special purpose structures involving partnerships established or managed in Guernsey are likely to come in scope of economic substance requirements. The changes are also relevant to other structures that use partnerships managed or established in Guernsey.

### Which partnerships will be brought in scope of economic substance requirements?

All Guernsey law partnerships, including limited partnerships ("LPs") both with and without legal personality and limited liability partnerships ("LLPs") will be brought in scope. Foreign partnerships, including LPs and LLPs, formed under non-Guernsey law and which have their "place of effective management" ("POEM") in Guernsey and carry on business in Guernsey will also be brought into scope.

In relation to this last category of partnerships, POEM is an internationally recognised tax concept which is generally taken to mean "the place where key management and commercial decisions that are necessary for the conduct of the enterprise's business are in substance made". It is yet to be confirmed whether Guernsey will adopt this meaning of POEM, but it makes sense to do so given its wide international recognition.

### What activities trigger the application of economic substance requirements?

The above partnerships will be in scope of economic substance requirements if they derive gross income from a "relevant activity". "Relevant activity" for economic substance purposes includes banking, insurance, fund management, financing and leasing, headquartering, shipping and distribution and service centre. Although not explicitly stated, we would also expect that the exploitation of intellectual property and pure equity holding (two other activities which trigger economic substance requirements but which are not "relevant activities") will also cause partnerships to come in scope of economic substance requirements.

The changes are therefore extending existing economic substance requirements to partnerships and are not extending the scope of activities that trigger economic substance requirements.



### Which partnerships will not be in scope of economic substance requirements?

As with companies, partnerships that are funds regulated by the GFSC are out of scope even where the fund partnership carries on an activity that triggers substance requirements. We expect that the rules which cause “self-managed funds” to be in scope of economic substance requirements (by deeming them to be carrying on fund management) will in principle apply to partnerships, but it should be noted that fund partnerships are generally LPs and so typically won’t be treated as self-managed as the general partner will be conducting the fund management and will therefore be subject to economic substance requirements as a company.

In addition to GFSC-regulated funds, the following partnerships are expected to be out of scope, although the discussions with the EU Commission are on-going:

- partnerships where all the partners are Guernsey resident individuals;
- partnerships conducting activities only in Guernsey and which are not part of a multinational group; and
- partnerships with their POEM in another jurisdiction outside Guernsey.

### When will partnerships be brought in scope of economic substance requirements?

Partnerships that are formed on or prior to 30 June 2021 will be subject to a transitional period and will come into scope for accounting periods commencing on or after 1 January 2022. For example, if an LP is formed on 1 June 2021 and has its first accounting period end date on 30 June 2022, it will be in scope from the accounting period commencing 1 July 2022 (assuming that it conducts activities triggering economic substance requirements). However, a partnership formed on or after 1 July 2021 will come in scope immediately on formation (again assuming that it conducts activities triggering economic substance requirements).

### How will economic substance requirements apply to partnerships?

We await to see the final form legislation which will clarify a number of points in detail. As a general matter we expect the same economic substance requirements that apply to companies to apply to partnerships, although some modification will be needed, especially in relation to the requirements regarding location and frequency of board meetings, and core income generating activities.

For LPs, we expect that the place where the general partner conducts its business will be the POEM of the LP. Unregulated corporate general partners of LPs are currently not considered to be carrying out the relevant activity of fund management. This will continue to be the case but the LP itself may be in scope and where it is the general partner will likely be responsible for ensuring that the LP complies with economic substance requirements.

### Will the current position regarding partners in partnerships change?

Under current economic substance legislation, where a Guernsey tax resident company (or in certain cases a company that would be Guernsey tax resident but for exempt status) is a partner or member in a partnership that carries on a relevant activity or exploits intellectual property, the activity of the partnership is treated as being carried on by the company and it needs to comply with economic substance requirements.

This partner attribution will be abolished as a partnership carrying on an activity that triggers substance requirements will need to comply with economic substance requirements itself. However, the general principle of fiscal transparency for other partnership tax matters will remain.

#### Disclaimer

The information contained in this advisory is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter. For example, different considerations will apply where a regulated entity is involved.



## What filing requirements will apply?

New filing requirements will be introduced for partnerships, including requirements to:

- register with the Revenue Service (this will apply to all partnerships and not just those that are subject to economic substance requirements);
- make an annual filing confirming whether they need to comply with economic substance requirements (this will also apply to all partnerships and not just those that are subject to economic substance requirements); and
- file an annual tax return together with financial statements (the filing deadline will be aligned with that for companies).

## Walkers comment

The extension of economic substance requirements to partnerships has been anticipated for a while and the further details clarify at a high level what was generally expected in order to bring partnerships into scope.

As partnerships are generally fiscally transparent there is no established internationally recognised concept of tax residence for partnerships, and so the adoption of Guernsey POEM to bring foreign law partnerships into scope is a sensible move. We await to see if the generally accepted definition of POEM is adopted by the final legislation, but if it was Guernsey would benefit from existing OECD commentary on this concept.

Both Guernsey and foreign law partnerships will need to decide where their POEM is located. This could involve detailed technical advice, especially in relation to LLPs where there are a mixture of Guernsey resident and non-Guernsey resident members.

However, to prevent compliance issues for Guernsey law partnerships whose POEM is outside of Guernsey, and so would be unlikely to comply with all the economic substance requirements, the final form legislation would need to include the proposed exclusion for partnerships with a non-Guernsey POEM.

## About Walkers' economic substance practice

Walkers has a dedicated experienced regulatory group that can offer bespoke privileged legal advice and guidance in connection with all aspects of the Guernsey economic substance regime, including in relation to POEM and tax residence.

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