

UPDATE

Jersey partnerships – New guidance published in relation to the economic substance law

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As we reported in May 2021, Jersey has introduced a new economic substance law relating to partnerships established or managed in Jersey. The Taxation (Partnerships – Economic Substance) (Jersey) Law (the **Law**) came into force on 8 October 2021.

Our May 2021 update in relation to the Law can be found [here](#).

The Jersey Government has now published Guidance, developed in conjunction with the other Crown Dependencies, in relation to certain key concepts contained in the Law, such as the identification of a partnership's governing body and its place of effective management, and the application of certain exemptions.

The new Guidance can be found [here](#) on the Jersey Government website.

This further update summarises the new Guidance.

Background

By way of a refresher, the new Law:

- applies to
 - certain Jersey limited partnerships, SLPs, ILPs, LLPs and general partnerships; and
 - certain foreign limited partnerships,that have their 'place of effective management' in Jersey and carry on certain 'relevant activities' from which the relevant partnership derives gross income;
- contains broadly similar requirements to Jersey's company economic substance law in terms of the relevant activities that could bring such partnerships in scope, the economic substance requirements in-scope partnerships will have to meet in Jersey and the penalties for their non-compliance; and
- importantly, does not apply to fund partnerships.

Relevant partnerships in existence as at 30 June 2021 are in scope for their accounting periods commencing on or after 1 January 2022.

Relevant partnerships formed on or after 1 July 2021 are in scope from the date of their formation.

Where a relevant Jersey partnership has its effective place of management in a jurisdiction where the highest rate at which a company or individual may be charged to tax on any part of its income is lower than 10% or where the partnership is not required to satisfy a test that is substantially the same as the Jersey economic substance test, it will also be in scope of the new law.

Key impact areas

Although fund partnerships are out of scope, we expect that key impact areas will be partnerships (eg 'GPLPs' or LLPs) that manage fund vehicles from Jersey (where no separate manager has been appointed by the fund), and also partnerships that undertake and manage lending (ie 'financing and leasing') activities from Jersey.

In the context of 'holding partnership' business (ie partnerships holding controlling stakes in underlying companies), note that only LLPs holding controlling stakes in underlying companies are in scope, not limited or general partnerships.

The New Guidance

The new Guidance provides further clarity in the following areas:

Governing Bodies of Partnerships

Where in scope, a partnership will be required to demonstrate that the relevant activity is directed and managed by its 'governing body' in Jersey in order to meet the applicable economic substance test. The Guidance provides clarity in relation to how that governing body is identified as follows:

- the governing body is the person or group of persons responsible for making the partnership's strategic and management decisions, having the general supervision of the affairs of the relevant partnership. If that person or group can't be identified, then all of the partners in the partnership will be deemed the governing body.
- For a limited partnership, the governing body will be considered to be the board of directors of the body corporate which is the partnership's general partner.
- For an LLP, the governing body will be its management committee or team (however constituted) as mandated pursuant to its partnership agreement.
- For a general partnership, it's necessary to have regard for the facts and circumstances of that partnership and its partnership agreement to determine the governing body. For example, the partnership may have mandated a group of 'senior' partners that are akin to a management committee that are considered to be the governing body. In other circumstances, all partners in the partnership may be considered the governing body.
- For an LLC managed by its members, the governing body will be those members; for an LLC that has vested its management in another person, the governing body will be that person.
- If there is evidence that substantive decision making is taking place in any forums, or by any persons, without reference to, or without the oversight of, the identified governing body, it is unlikely to be accepted that this is the governing body for purposes of the economic substance test.

The Guidance also provides the following clarity in relation to how a governing body must operate in compliance with the Law:

- It is expected that a relevant partnership will need to have meetings of its governing body in line with the levels of activities it conducts, and it is at those meetings that the decisions required to run the partnership are made.
- The governing body should meet in the Island at an adequate frequency given the level of decision making required in respect of the relevant activity. Strategic decisions must be set at those meetings, with the minutes reflecting those decisions, even those where the board considers courses of action and rejects them. All minutes and relevant records must be kept in the Island.
- The governing body, as a whole, must have the necessary knowledge and expertise to discharge their duties.

The 'Place of Economic Management' Test

The Law generally treats a relevant partnership as resident in Jersey, and therefore in scope of the Law, if it is either (i) legally formed in Jersey and its place of effective management (**POEM**) is not elsewhere; or (ii) if it is foreign-formed but has its POEM in the Island.

The new Guidance provides further clarity on the POEM concept as follows:

- The Law follows the OECD guidelines on POEM, which note: *'The place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made.'*
- Although the Guidance acknowledges a partnership may have multiple places of management, a core question to be examined is: *where is the place that true control and management of the entity occur in conducting its business? The intent is to ascertain where the entity is actually managed.*
- Although there is no one set test, as each situation depends on its particular facts and circumstances, in the majority of cases the form, membership and location of the governing body (see above) can be clearly established, usually from the partnership agreement, partnership registers, minutes of meetings, or from the records at the registry, and from this follows the partnership's POEM.

The Guidance then provides a series of helpful **case study examples**, including

- **Jersey LLP with Jersey corporate managing partner:** where a Jersey LLP whose partnership agreement appoints a single managing partner that is a Jersey limited company whose directors meet in the Island to take strategic partnership decisions, the LLP is in scope of the Law, the board of that company is considered the governing body of the LLP and the LLP has its POEM in Jersey;
- **Non-Jersey LP with Jersey corporate general partner:** where a non-Jersey limited partnership appoints a single general partner that is a Jersey limited company whose directors meet in the Island to take strategic partnership decisions, the board of that company is considered the governing body of the foreign partnership and the partnership is in scope of the Law because it has its POEM in Jersey;
- **Jersey LP with Cayman corporate general partner:** where a Jersey limited partnership appoints a general partner that is a Cayman incorporated company that operates entirely from the Cayman Islands, Jersey is not considered to be the partnership's POEM but, as the Cayman Islands have substantially similar economic substance requirements to Jersey (and are therefore a 'qualifying jurisdiction' for the purposes of the Law), the partnership will not be in scope of the Law, but will likely be in scope of the equivalent Cayman economic substance law. (NB attached to the Guidance is an Annex 1 listing each of the 'qualifying jurisdictions' having substantially similar economic substance requirements to Jersey for this purpose);
- **Jersey LP with US corporate general partner:** where a Jersey limited partnership appoints a general partner that is a US incorporated company that operates entirely from the USA, Jersey is not considered to be the partnership's POEM but, as the rate of tax in the USA exceeds 10 percent, the partnership will not be in scope of the Law; and
- **In cases of uncertainty:** where a partnership has no clearly mandated governing body, giving rise to uncertainty as to where the partnership has its POEM, the following evidence may help identify the POEM:
 - Where the majority of partnership meetings take place (ie where there is no mandated governing body).
 - Where the strategic decisions regarding the sale/purchase or dissolution/liquidation of assets take place.
 - Where the partnership has any permanent establishments (if any).
 - Whether the partners, particularly those involved in its management, are resident in Jersey.
 - Which jurisdiction's laws govern the legal status of the entity?
 - Where are the legal titles/records and accounting records maintained/kept/located?
 - If the partnership has a publicly designated headquarters, where is it located?

Qualified Employees

Under the Law's economic substance test there is a requirement for a partnership in scope to demonstrate that it has adequate qualified employees in Jersey engaged in the relevant activity. The new Guidance clarifies that, for this purpose, 'qualified employees' would include those working for the partnership, its governing body (including a general partner, or any other partners) or for persons to whom activities have been outsourced (eg a Jersey administrator of the partnership or governing body), provided those duties are performed or held in the Island.

Guidance on Domestic and Individual Exemptions

The new Guidance also provides further clarity and some further case study examples in relation to the potential application of two particular areas of exemption under the Law:

- (a) the '**domestic exemption**', where the partnership is not part of a multi-national group and does not undertake business activities outside of Jersey; and
- (b) the '**individual exemption**', where all of the partners of the partnership are individuals subject to income tax in Jersey (ie most likely applicable to Jersey general partnerships).

For the purposes of applying the domestic exemption, the Guidance explains that

- in general, a 'multi-national group' is a collection of enterprises (not all tax resident in the same jurisdiction) that are required to prepare consolidated financial statements, in accordance with international accounting standards. Unlike the definition of an MNE Group for the purpose of Country-by-Country reporting there is no specified turnover threshold; the group is simply comprised of one or more enterprises that are tax resident in different jurisdictions; and
- a partnership will be considered to carry out its activities from the fixed place of business/premises through which the trade or business is carried on. For limited partnerships, only the general partner is permitted to conduct activity of the limited partnership and the limited partnership will be considered to carry out its activities from the fixed place of business/premises through which the general partner's trade or business activities are carried on. Performing services for the benefit of the resident partnership (for example meeting with a bank outside the Island to agree more favourable lending terms), rather than a customer, are not considered part of the partnership's activities in this context.

Companies Economic Substance Guidance Incorporated by Reference

The new Guidance confirms that where the equivalent, lengthier, guidance on economic substance requirements for Jersey companies is relevant to the requirements for partnerships, it is incorporated by reference into the partnership Guidance. Reference to the corporate guidance may, for example, be helpful in assessing whether a partnership is carrying on a 'relevant activity' and whether 'core income generating activities' relating to that activity are being carried on in Jersey, as required by the Law. The corporate guidance can be found [here](#).

Reporting Requirements

The Jersey reporting requirements which apply to relevant partnerships are not covered in the new Guidance and remain under development, with an industry consultation expected shortly. It is anticipated that that annual confirmations from partnerships will be required which would be aligned with the current filing deadline of 31 December for Jersey companies.

Next Steps

If they have not already, it is important that those managing or administering partnerships in Jersey (whether Jersey or foreign partnerships):

- review the partnership's activities as soon as possible to assess whether they are 'relevant activities' under the Law which give rise to gross income;
- if the partnership is potentially in scope of the Law (or perhaps the equivalent economic substance law of another 'qualifying jurisdiction') confirm what its governing body is and where its POEM lies, and that the partnership and its governing body are operating in compliance with the applicable economic substance test (including analysing the sufficiency and activities of its 'qualifying employees'); and
- keep a close eye out for, and prepare to comply with, the new reporting regime which will be revealed shortly.

How We Can Help You

If you have any questions or concerns with the potential application of the new Law and/or Guidance to any of the partnerships you operate or administer, please do not hesitate to contact your usual Maurant Ozannes team or any of the contacts listed below.

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