

# Partnerships Guidance

Draft dated 1 January 2023

## 1. Overview

- 1.1 Finance (2023 Budget) (Jersey) Law 202- makes significant changes to the Income Tax (Jersey) Law 1961 (“the Law”) as it applies to partnerships. Unless stated otherwise in this guidance, these changes apply for year of assessment 2022 onwards.
- 1.2 The major changes made include:
- Introducing a requirement that all partnerships required to report to Revenue Jersey (see section 2 below) must submit an annual Partnership Combined Notification.
  - Bringing the assessment of profits of general partnerships into line with other types of partnerships (limited partnerships, limited liability partnerships etc.). The profits of a general partnership will now be assessed on the partners themselves rather than on the partnership, treating general partnerships as ‘transparent’ for income tax purposes.
  - Making a ‘responsible partner’ responsible for the partnership’s tax compliance affairs and liable to penalties for non-compliance with the Law.
  - Introducing an anti-avoidance provision that prevents material changes in partners from being used to manipulate capital allowances claims for departing and/or new partners.
  - Introducing a new approval procedure that allows individual foreign limited liability partnerships (“LLP”) to be treated as transparent for Jersey income tax purposes provided that foreign LLP is fiscally and legally comparable to a Jersey LLP.
- 1.3 Collective investment vehicles as defined in Article 20E of the Law<sup>1</sup> have very limited reporting requirements under the Partnership Combined Notification.

## 2. Reporting to Revenue Jersey

- 2.1 Revenue Jersey is expecting a partnership to be in scope for annual reporting where that partnership:
- is formed/ incorporated in Jersey;
  - has its place of effective management in Jersey;
  - earns profits and gains that result in one or more partners having an obligation to submit a Jersey tax return – for example, where the partnership receives Jersey source income that is not exempt under Article 118B of the Law; and, or
  - is required to provide information further to Taxation (Partnerships – Economic Substance) (Jersey) Law 2021.
- 2.2 The Comptroller acknowledges that certain partners in a partnership present no material risk of loss of tax to the exchequer and will in any event be providing information regarding their share of partnership profits to Revenue Jersey via their own tax return. This will principally

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<sup>1</sup> referred to as “collective investment vehicles” in Article 20E purely to distinguish this particular definition from the more limited definition of “collective investment fund” in Article 3, which applies to the rest of the Law

apply to partners that are companies whose profits are subject to income tax at the rate of 0% and are beneficially owned by non-Jersey resident shareholders. The Comptroller therefore intends to exclude those partnerships from the financial and tax reporting requirements of the Partnership Combined Notification by including reporting limitations in the annual General Notice<sup>2</sup>.

Responsible partners are expected to review the General Notice every year to confirm what general reporting requirements apply to their partnership for a particular year of assessment. However, notwithstanding any reporting limitations included in a General Notice, the Comptroller maintains the power to issue a Notice to submit a Partnership Combined Notification against specific partnerships. The Comptroller is most likely to exercise this power where he considers there is a risk of tax avoidance associated with that particular partnership.

### **3. Basic information required by Revenue Jersey**

#### **The partnership**

- 3.1 Revenue Jersey automatically receives information from Jersey Financial Services Commission (“JFSC”) in respect of all partnerships registered with that organisation. That information includes the name of the partnership, the date it is formed, its registration number and Jersey address.

Unless they are conducting regulated activities, general partnerships and foreign partnerships are not usually required to register with the JFSC. Unless these partnerships have already registered with Revenue Jersey and have a Tax Identification Number (“TIN”) allocated to them, they should complete the notification form found online at [Partnership notification - Information](#).

- 3.2 Revenue Jersey will maintain the following information in respect of all partnerships required to submit a Partnership Combined Notification:

#### Mandatory:

- The type of partnership (general, limited partnership, limited liability partnership etc.).
- Registration/ Business reference/ number (JFSC or overseas authority).
- (Registered) name of the partnership.
- Contact address in Jersey.
- Date of commencement of business.
- Name and address of tax agent (if applicable). The tax agent must also submit an ‘All Communications’ authority letter to Revenue Jersey confirming their appointment before Revenue Jersey can communicate with them on behalf of the responsible partner.

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<sup>2</sup> The General Notice for a year of assessment is usually published in the Jersey Gazette in January of the following year – see [Jersey Gazette](#)

Optional:

- (Recommended) Name and contact details of the partner nominated to be the 'responsible partner' (see section 4 below for further information on responsible partners).
- Does the partnership employ Jersey residents.
- Nature of business.

3.3 Revenue Jersey will issue a TIN to a partnership once the basic information has been provided by the partnership to Revenue Jersey.

### **The partners**

3.4 Where a partner is either (i) Jersey resident for tax purposes or (ii) non-Jersey resident but the partnership receives Jersey source income that does not fall within any of the categories of exemption included in Article 118B of the Law, they should be registered for tax with Revenue Jersey. If they have not already done so, the partner can register via [Registering for tax and getting a tax identification number](#).

## **4. Nominated and responsible partner**

- 4.1 The Law allows a partnership to nominate one of its partners to be the 'responsible partner'. The Comptroller does not intend to replace the partner nominated by the partnership with another partner unless the nominated partner is not fulfilling their responsibilities under the Law.
- 4.2 Details of the nominated partner who will act as the responsible partner can be provided online to Revenue Jersey at [Partnership notification - Information](#).
- 4.3 The responsible partner should complete and submit (via the online portal) the annual Partnership Combined Notification on or before the filing date, which is 30 November after the year of assessment.
- 4.4 The responsible partner does not have to be resident in Jersey, but they should have a Jersey contact address that Revenue Jersey can send notices and other correspondence to with the reasonable expectation that the responsible partner will be able to deal with that correspondence on a timely basis. If a responsible partner does not provide a Jersey address, the Comptroller may exercise his right to appoint another partner who has a Jersey address to act as the responsible partner.
- 4.5 Any fines or penalties arising from the submission of incorrect information to the Comptroller will be levied on the responsible partner and will be a debt owed by that responsible partner to Revenue Jersey. It is a matter for the responsible partner and the other partners in the partnership to decide amongst themselves how any such fine or penalty is allocated between them.
- 4.6 If the partnership does not nominate a partner to act as responsible partner, the Comptroller will decide who the responsible partner should be.

- 4.7 Where the Comptroller considers a partner to be the responsible partner and that partner is not the nominated partner of the partnership, the Comptroller will confirm his decision in writing to the partnership, using the Jersey contact address provided per section 3.2 above.
- 4.8 Article 20E(5) of the Law confirms a limited partner cannot be the responsible partner.

## **5. Article 74 of the Law**

- 5.1 Jersey does not have any 'general partnership' law. Consequently, on a customary law basis, the partners of a general partnership (broadly speaking two or more people working together in business) are liable for debts of that business on a 'joint and several' basis.
- 5.2 The 'joint and several' principle extends to general partnership assessments issued under Article 74 of the Law for years of assessment up to and including year of assessment 2021. Therefore, whilst the liability to pay income tax further to an 'Article 74 assessment' might have been divided up between the partners by agreement between those partners, if one of the partners failed to pay their share of that partnership liability, any or all of the other partners could still be pursued by Revenue Jersey to pay that outstanding amount.
- 5.3 The changes made to Article 74 by Finance (2023 Budget) (Jersey) Law 202- affects who is assessed on the profits of a general partnership for year of assessment 2022 onwards. It is now the individual partners of a general partnership who are assessed, not the partnership. This means other partners in a general partnership will not be pursued by Revenue Jersey should a partner fail to pay the income tax liability arising on their share of partnership profits. We expect partners of general partners to welcome this change, which also assists with independent taxation where the partners include married persons or civil partners.
- 5.4 The change to Article 74 of the Law for year of assessment 2022 onwards should not affect the quantum of income tax payable by the partners of a partnership. See section 8.4 of this guidance if you consider this might not be the case.

## **6. Article 75A of the Law**

- 6.1 Interacting with new Article 106A(6A) of the Law, Article 75A is an anti-avoidance provision designed to prevent material changes of partners in a partnership from being used as an opportunity to manipulate capital allowances claims made by those partners. This provision comes into effect for partnership changes made after 31 December 2022.
- 6.2 Where Article 75A applies, there is an automatic deemed disposal and re-acquisition of the partnership's plant and machinery at open market value, unless open market value is greater than the original cost of that plant and machinery in which case the original cost is used.
- 6.3 The provisions will only apply where there has been a change in the partners of a partnership at a particular time and that change affects 50% or more of the assets or voting rights of the partnership. If there has been a change in profit share ratios with no (50%+) change in the composition of the partners, Article 75A will not apply.

*Example* – Article 75A will not apply where partners A and B change profit share ratios from 50:50 to 20:80 but it will apply if partners A and B, sharing profits 50:50, introduce a new partner C and the profit share ratios are amended to 20:20:60.

6.4 The Comptroller may look to use Article 134A of the Law to apply Article 75A to a change in partners if he considers that the change has been deliberately staggered over a period of time to avoid Article 75A coming into effect.

## **7. Article 76E of the Law | Approval of a foreign Limited Liability Partnership**

7.1 A foreign LLP is assessable to Jersey income tax as a body of persons unless the LLP has been 'approved' by the Comptroller. A foreign LLP that has been approved by the Comptroller is treated for the purposes of the Law as if it is a Jersey LLP i.e. it is transparent.

7.2 The Comptroller can approve:

- A specific foreign LLP; or
- The LLP legislation of a non-Jersey jurisdiction.

If the Comptroller approves the legislation of a non-Jersey jurisdiction, a foreign LLP incorporated in that jurisdiction must still apply (under Article 76E) to be treated as a transparent entity.

A foreign LLP that has not applied for approval under Article 76E will continue to be assessable as a body of persons notwithstanding the fact that the LLP legislation of the place of incorporation may have been approved by the Comptroller.

7.3 When considering if approval should be granted under Article 76E, the Comptroller will take into account whether (*inter alia*):

- Jersey has a Double Taxation Agreement or some other exchange of (tax) information agreement with the jurisdiction concerned;
- the local LLP law has the same fiscal and legal outcomes as Limited Liability Partnerships (Jersey) Law 2017<sup>3</sup>; and, or
- the jurisdiction has been grey or blacklisted by a recognised body such as OECD or EU.

7.4 If the foreign LLP wishes to be treated as transparent for the purposes of the Law, the responsible partner (or appointed tax agent) should write to the Comptroller at [JerseyTaxRulings@gov.je](mailto:JerseyTaxRulings@gov.je) explaining why they consider the LLP itself or the foreign law under which the LLP is formed should be approved for the purposes of Article 76E.

7.5 The submission should include details of the partnership, the partners, the activity of the partnership, where that activity will take place, and a summary of the similarities and differences between the applicable foreign LLP law and the Limited Liability Partnerships (Jersey) Law 2017.

7.6 A list of approved foreign laws will be published and maintained on Revenue Jersey website.

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<sup>3</sup> For example, whether the foreign LLP has separate legal personality, but it not considered to be a body corporate in the local jurisdiction and is treated as transparent for the purposes of that jurisdiction's tax laws

## **8. Calculation of profits and partner profit shares**

- 8.1 Taxable profits, capital allowances and allowable losses should be calculated on a firm-wide basis in accordance with the Law, and then split between the partners.
- 8.2 Fundamentally, it is a matter for the partners of the partnership to agree amongst themselves how partnership profits and losses should be split between the partners. This principle was reaffirmed in recent UK tribunals, *Chartered Accountants' Firm v Braisby (Inspector of Taxes) [2005] STC (SCD) 389*.
- 8.3 The Comptroller will not ordinarily query how profits and losses are allocated between the partners unless he considers there might be a tax avoidance motive involved in which case, he may invoke Article 134A to align taxable profits with the profit allocations applicable for the partnership basis period<sup>4</sup>.
- 8.4 Revenue Jersey is aware that some general partnerships have chosen to divide the income tax liability of the partnership under (old) Article 74 of the Law amongst the partners using profit share ratios for the year of assessment rather than the ratios applicable to the partnership basis period. If a partnership wishes to move how it allocates profits and losses to individual partners from the 'profit share ratios of the year of assessment' basis to the 'profit share ratios of the partnership basis period' basis, the general position of Revenue Jersey is that it will accept any transitional adjustments to profit shares proposed by the partners without looking to invoke Article 134A but will be happy to discuss the matter with the responsible partner or the partnership's tax agent if requested.

## **9. Revenue Jersey compliance checks**

- 9.1 Revenue Jersey will expect all partnerships that undertake commercial activity in Jersey to submit financial statements and firm-wide/partnership income tax computations in respect of the partnership basis period, together with a statement showing how the firm-wide/partnership tax-adjusted profit or loss and capital allowances have been allocated between the partners.  
  
Revenue Jersey can review these tax computations and statements to confirm the calculated taxable profits etc. are consistent with the Law and to verify disclosures made by partners within their own Jersey income tax returns (where applicable).
- 9.2 The tax-adjusted profit or loss and capital allowances attributable to partners with no Jersey tax reporting obligations of their own does not need to be disclosed to us. However, including the non-Jersey partner allocations of profits/capital allowances as part of the statement on a 'consolidated' basis would be helpful to reconcile the partnership financial statements to individual partner tax return disclosures.
- 9.3 If such information is not provided with the Partnership Combined Notification, the responsible partner may receive a request for this information from Revenue Jersey.

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<sup>4</sup> Partnership basis period for these purposes is determined by Article 64A (et seq.) of the Law. Concession B13 generally applies to losses such that losses are generally relieved in line with the partnership basis period

## 10. Economic substance

- 10.1 The Taxation (Partnership – Economic Substance) (Jersey) Law 2021 (“the TPES Law”) came into effect from 1 July 2021.
- 10.2 Where a Jersey resident partnership undertakes “relevant activities” (as defined by Articles 2 and 4 of the TPES Law respectively), the responsible partner will meet the partnership’s information provision requirements under Article 11 of the TPES Law by completing the economic substance sections of the Partnership Combined Notification.
- 10.3 Revenue Jersey will not routinely request information related to 2021 but reserves the right to request information in respect of the 2021 period of a partnership if it believes the Comptroller may be required to exchange information further to Article 13 of the TPES law.

## 11. Completing the Partnership Combined Notification

### 11.1 General

The Partnership Combined Notification (“Notification”) should be completed by partnerships or limited liability companies (“LLCs”) for year of assessment 2022 and future years.

The Notification can only be completed and submitted online via the dedicated Tax Office Online System (“TOOS”): [SOJ Taxes Online](#). Paper, pdf etc. returns are not valid returns and Notifications submitted to Revenue Jersey in these formats will be liable to late filing penalties.

The deadline for completing and submitting the Notification is 30 November after the applicable year of assessment. Penalties calculated in accordance with Article 17A of the Law will apply to Notifications submitted after the filing date.

The responsible partner for partnerships or the secretary for LLCs should ensure they have given themselves sufficient time to complete and submit the Notification before the filing deadline. We strongly recommend the responsible partner or secretary gains access to TOOS at least two weeks before the filing deadline otherwise, due to typical volumes of correspondence and telephone calls received in the run-up to a deadline, Revenue Jersey cannot guarantee that access to TOOS will be available in time for the partnership/ LLC to meet the deadline.

#### *Partnerships*

All partnerships with a Jersey nexus are required to complete a Notification.

If the partnership is not a “relevant partnership” and is eligible to claim exemption from the economic substance law (for example, it is a qualifying collective investment fund), the responsible partner will only be required to complete Section 1 (Background Information) and Section 7 (Finish Your Return/ tax declaration and submission) of the Notification.

A relevant partnership is a “partnership” as defined in Article 3 of the Law, that earns profits and gains that result in one or more partners having an obligation to submit a Jersey tax return.

## *Limited Liability Companies*

By virtue of Article 135D of the Law, a company incorporated under Limited Liability Companies (Jersey) Law 2018 is treated as tax transparent for the purposes of the Law. Since this is to all intents and purposes the same tax treatment as partnerships, to meet the reporting requirements of Article 135C of the Law, the secretary of an LLC is required to complete a Notification on behalf of the company.

*For the remainder of this guidance note, where appropriate, any reference to ‘responsible partner’, ‘partner’ or ‘partnership’ should be read as a reference to ‘secretary’, ‘member’ or ‘LLC’ respectively where the entity completing the Notification is an LLC.*

### 11.2 Section 1 (Background Information/ Economic Substance)

This section asks the responsible partner to confirm:

- The residence of:
  - (i) the partnership as per by Article 2 of Taxation (Partnership – Economic Substance) (Jersey) Law 2021 (“TPES Law”) or
  - (ii) the LLC as per Article 135E(1)(b) of the Law.
- The type of partnership – general partnership, LP, LLP, LLC etc.
- Whether the partnership is outside the scope of the TPES Law by virtue of:
  - a. Being a collective investment fund as defined in Article 4(2) of the TPES Law;
  - b. All of the partners being individuals subject to income tax in Jersey; or
  - c. Not being part of a multinational group and undertaking business solely in Jersey.

*Note – for LLCs, the only economic substance exemption available is ‘a’.*

- Whether accounts have been produced that end in the year of assessment. If the responsible partner answers ‘yes’ to this question, the Notification will request the accounting period end of the partnership.
- The notification will require the main activity (from a drop-down menu), turnover (by range, not a specific amount), accounting profits (by range, not a specific amount).

If the partnership falls within the definition of a ‘collective investment vehicle’ as set out in Article 20E of the Law<sup>5</sup>, the responsible partner is simply asked to complete Section 1 and Section 7 (Finish Your Return/ tax declaration and submission) of the Notification.

### 11.3 Section 2 (Economic Substance)

Completion of these sections will fulfil the partnership’s disclosure requirements of Article 11 of the TPES Law.

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<sup>5</sup> Which mirrors the definition in Article 4(2) of the TPES Law



The economic substance sections and questions within the Notification broadly mirror the economic substance reporting sections/questions included in the Jersey corporate income tax return, amended as appropriate.

If required, the responsible partner can therefore use the guidance provided at [Corporate tax return guidance notes: Section 7 \(economic substance\)](#) and/or [ID Economic Substance Corporate Return Guidance 20190426.pdf \(gov.je\)](#) for assistance in completing the Notification.

#### 11.4 Section 3 (Tax Declaration Questions)

The tax declaration page asks the responsible partner to confirm if the partnership is a 'relevant partnership'. For partnerships (not LLCs) this confirmation is required by Article 20E(1) of the Law.

If the responsible partner answers 'yes' to questions 10 and 10a of the Tax Declaration page, the partnership is a relevant partnership. The responsible partner will then be directed to Section 4 (Partnership/ LLC Tax Information) of the Notification.

If the partnership is not a relevant partnership, the responsible partner will be directed straight to Section 6 (Other Information) and then Section 7 (Finish Your Return) of the Notification. Partnerships that are not relevant partnerships do not need to complete the detailed tax sections of the Notification.

#### 11.5 Section 4 (Partnership/ LLC Tax Information)

The first question – 10b - of this section asks if the partnership is required to provide further information under a Notice. This requirement can arise further to the General Notice issued each January in the Jersey Gazette or a Notice issued by the Comptroller issued against the partnership itself.

If the responsible partner answers "no" to question 10b, the Notification takes the partner directly to Section 6 (Other Information) and then Section 7 (Finish Your Return).

If the responsible partner answers "yes" to that question, the partner will be asked to provide the following headline financial and tax information in respect of the partnership:

- Turnover
- Profit / Loss
- Whether or not capital allowances are due
- Taxable profit of the partnership for the period
- Tax losses of the partnership for the period

This information should be available from the financial statements of the partnership and accompanying tax computations.

Revenue Jersey assumes all financial statements will be prepared using Generally Accepted Accounting Principles - i.e. 'cash accounts' will not be acceptable.

#### 11.6 Section 5 (Partner/ Member Tax Information)

A page needs to be completed for each partner that is Jersey resident for tax purposes or is non-Jersey resident but is required to complete a Jersey tax return in respect of their interest in the partnership.

The Notification only requires basic information to be submitted as follows:

- Name of partner
- Partner's TIN
- Total Taxable profit share
- Taxable profit share that is unearned income – to enable Revenue Jersey to consider the Jersey social security implications
- Taxable loss share – available for relief under Articles 107, 107A or 108 of the Law (as applicable)

#### 11.7 Section 6 (Other Information)

This is an open text box that allows the responsible partner to add any explanations, information etc. in support of the Notification. The responsible partner is not obliged to complete this section.

#### 11.8 Section 7 (Finish Your Return)

The page asks the responsible partner to confirm the contents of the Notification are true, complete and correct.

The responsible partner can attach financial statements, tax computations and related partnership profit share statements to the Notification via this page. There is no obligation to attach partnership accounts to the Notification. However, the responsible partner or secretary should have regard to section 8 of the Partnerships Guidance.

On submission of the Notification, the responsible partner should receive a confirmation email, which evidences that the Notification has been successfully delivered to Revenue Jersey.