

# Consultation on the extension of Jersey's economic substance regime to partnerships

## **Consultation Process**

The consultation period will run from 1<sup>st</sup> February to 1<sup>st</sup> March 2021.

This is necessarily shorter than otherwise to allow the Government of Jersey to respond to the timetable of the Code of Conduct Group.

Any submissions received after this date may not be considered.

Responses should be emailed to;

[Tax.policy@gov.je](mailto:Tax.policy@gov.je) Message Title :”Partnership consultation”

Or can be returned via post to;

**Tax Policy Unit – Partnership consultation**

**19-21 Broad Street**

**St Helier**

**Jersey**

**JE2 3R**

## **Freedom of Information**

Submissions will be subject to the provisions of the Freedom of Information Act. Revenue Jersey may receive requests for any or all information supplied as part of this process.

## 1 Introduction

The purpose of this consultation is to examine the extension to partnerships of economic substance rules that currently apply to Jersey resident companies. The reason why the economic substance regime is being extended to partnerships is to fully meet commitments the Government of Jersey gave to the EU Code Group in 2018.

Revenue Jersey is again working closely with the tax authorities in the other Crown Dependencies on the economic substance changes as outlined herein.

These economic substance developments will require some changes to the reporting requirements of partnerships. Therefore, Revenue Jersey is also planning to consult this year on ways to reform and streamline the current administration regime for the many types of partnerships which operate in Jersey. The current tax administration rules will be updated and clarified, in order to reduce uncertainty and compliance cost for business conducted in Jersey and for Revenue Jersey. A further consultation will take place in the coming months which will focus on the detail of the proposed tax administration measures.

The tax proposals will require further time for discussion and consultation. Therefore, it is not appropriate to try and deal with them in this consultation on economic substance (which, by necessity is time bound, because economic substance legislation is required to be in place by 30 June 2021).

## 2 Background

### 2.1 The reason for consultation now on economic substance

- 2.1.1 The States of Jersey gave a political commitment in 2018 to the EU Code of Conduct Group (Business Taxation) (the 'Code Group') that it would introduce an economic substance in Jersey for resident companies.
- 2.1.2 While the Code Group has 'white listed' Jersey on the basis of the current company legislation, it has now confirmed that it considers partnerships to be included within the scope of that original commitment.
- 2.1.3 The Code Group is now requiring a number of jurisdictions (including Jersey) to include partnerships within their economic substance regime from 1 July 2021. A 6 month extension to this commencement date is provided for pre-existing partnerships. This position has been publicly confirmed in the 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.”*

2.1.4 To ensure that Jersey is in a position to meet this timeline, it is important to consult now. This will ensure that responses can be properly taken into account in the drafting of legislation.

2.1.5 While the economic substance reforms set out in this consultation paper will take effect from 1 July 2021, the proposed tax administration changes (referred to above and that will follow in the next consultation paper) will not have a practical effect on most partnerships until the filing of their 2022 returns, in 2023.

### **3 Taxation of different types of partnerships in Jersey**

3.1.1 The Income Tax (Jersey) Law 1961 specifically recognises a number of arrangements as “partnerships”. In some cases they are legal persons but in many cases they are not.

- Trades or professions carried on by two or more persons jointly. These are often referred to as ‘general partnerships’
- Limited partnerships, which are partnerships where one or more partners have limited liability and one or more partners have unlimited liability.
- Separate limited partnerships, which are partnerships formed under the Separate Limited Partnership (Jersey) Law 2011
- Incorporated Limited Partnerships, which are partnerships formed under the Incorporated Limited Partnership (Jersey) Law 2011; and
- Limited Liability Partnerships, which are formed under the Limited Liability Partnership (Jersey) Law 2017.

3.1.2 Two further categories are relevant in any consideration of partnerships;

- The Jersey Limited Liability Company, for which primary Law exists and which will be available in 2021. Like partnerships, these are intended to be transparent vehicles for Jersey tax purposes.
- Foreign partnerships, in particular Limited Partnerships which are formed under the laws of a jurisdiction outside Jersey.

### **4 The extension of the Economic Substance regime to partnerships**

4.1.1 The Government of Jersey recognises the importance of maintaining its reputation as a jurisdiction which upholds the rule of law, maintains the highest standards, and meets its international commitments.

4.1.2 It acknowledges that certain other jurisdictions have applied the economic substance test over a wider range of business arrangements (particularly partnerships), in meeting their commitments to the EU Code of Conduct Group.

- 4.1.3 The Code Group has now clarified its understanding of the commitments required and asked that all jurisdictions apply economic substance to the same range of businesses. In particular they require the test to be applied across all partnerships.
- 4.1.4 The Government of Jersey intends to meet this expectation.

## 5 Design principles (Building on Jersey's experience of economic substance)

- 5.1.1 The Government of Jersey recognises that companies in Jersey have been subject to economic substance rules since 1 January 2019 and that industry has developed a good understanding and experience of the requirements since then. The intention is that the new economic substance test for partnerships will follow the approach for companies as closely as possible, in order to build on this understanding and experience.
- 5.1.2 Similarly the Government will work to ensure that the focus of the new test is on partnerships whose activities are centred in Jersey. The expectation would be that these partnerships should be managed and controlled in our jurisdiction.
- 5.1.3 The Government will also work to ensure a level playing field applies in the approach adopted across other jurisdictions. Revenue Jersey will also work with counterparts in the other Crown Dependencies to develop a consistent approach across the Islands.
- 5.1.4 The principles that the three Crown Dependencies are discussing with the EU Commission are as follows:

1. The Economic Substance framework would apply to all partnerships in the jurisdiction other than partnerships where it can be demonstrated to the Code Group that risks do not exist in meeting the economic substance requirements. The Government of Jersey is aware that partnerships are fundamentally different to companies and that the partners may be drawn from a much wider range of circumstances. Therefore the following exemptions are currently under discussion with the EU Commission:

- Partnerships with a nexus in another jurisdiction

The economic substance regime for companies is applied to those companies that are tax resident in Jersey. As there is no international concept of tax residence for partnerships, the CDs are exploring with the Commission how to develop an approach that would lead to a similar outcome.

- Partnerships which are fund vehicles

In the economic substance regime for companies, fund vehicles are not required to be subject to the economic substance test. This is because regulatory requirements already ensure that there is sufficient substance for their activities. This exemption should be equally applicable to partnerships.

- Partnerships that are comprised solely of individual partners

Individual partners will be subject to the personal income tax regimes of the CDs insofar as they have a share of profits in a partnership in that CD. Where the entire partnership is comprised of individuals, then all the income of that partnership will be subject to personal income tax in that CD. Therefore, an exemption from the economic substance test is being sought for these partnerships.

- Partnerships that are wholly domestic.

Where a partnership is neither conducting activities outside Jersey, nor part of a group of multinational enterprises, it can be considered to be wholly domestic and therefore exempt from the economic substance test.

2. The Economic Substance rules will apply insofar as the partnership carries on relevant activities. “Relevant activities” will be defined in the legislation and will be based on the same definitions that currently apply to companies.
3. The Economic Substance rules will apply to partnerships in their entirety, rather than to the partners individually.

This means that if a relevant activity is being carried on by a partnership, the partnership will report the activities conducted by the partners through the partnership and the partnership will meet the test. The partners ( if companies ) will not be required to report the same activities in their returns, or subjected to the economic substance test as well.

4. Existing sanctions for failing to comply with Economic Substance requirements would be extended to partnerships.

## **6 Administration details**

- 6.1.1 The Economic Substance return for partnerships would be substantially similar to the current Economic Substance return for companies. This will minimise any need for industry to create new processes.
- 6.1.2 All partnerships would notify Revenue Jersey on an annual basis as to whether they need to file economic substance information.
- 6.1.3 This notification, and any further information, would be provided electronically through “intelligent” forms requiring only responses that are relevant to that partnership.
- 6.1.4 The administration of economic substance reporting and tax reporting will be harmonized to reduce duplication and administrative burdens
- 6.1.5 Where partnerships are not legal persons (so that winding up is not an appropriate sanction), escalating penalties will be required for each subsequent failure to comply with economic substance requirements.

## **7 Requests for feedback on this consultation**

Revenue Jersey is keen to hear the views and expectations of its stakeholders in determining how it can best meet the requirements of the Code Group in extending the introduction of economic substance requirements to partnerships.

In response to the proposed changes to meet economic substance requirements outlined above, please could you highlight any areas of concern or areas that you believe would require further consideration.

Revenue Jersey would be particularly interested in your views on the following:

1. The exemptions under discussion at 5.1.4 above and, in particular, whether any further exemptions are required/appropriate?
2. Any aspects of the existing economic substance rules that apply to companies, which may require modification in the application to partnerships (and which are not covered above).
3. Whether the approach of linking tax and economic substance reporting requirements, which works for companies is also the correct approach for partnerships?
4. Escalating penalties and the level at which they would prove dissuasive. For example, would it be dissuasive to apply a penalty of up to £50,000 for each subsequent period, after the current maximum penalty of £100,000 has been applied?

### 7.1 Respondent details

*Please provide the name (and contact details) of the firm / company / individual who is responding:*

*Are you answering this consultation on your own behalf, or on behalf of another body ?*

*Would you be directly affected by any proposed changes to partnerships ? Are you a member / partner in a partnership ?*

### 7.2 Thank you

**Please could you send your feedback by the 1st March 2021 to**

**[Tax.policy@gov.je](mailto:Tax.policy@gov.je) Message Title :“Partnership consultation”**

**Or via post to**

**Tax Policy Unit – Partnership consultation  
19-21 Broad Street  
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Jersey  
JE2 3RR**