

STATES OF JERSEY



Jersey

DRAFT TAXATION (COMPANIES – ECONOMIC SUBSTANCE) (AMENDMENT No. 2) (JERSEY) LAW 202-

**Lodged au Greffe on 29th December 2020
by the Minister for External Relations**

STATES GREFFE



Jersey

**DRAFT TAXATION (COMPANIES – ECONOMIC
SUBSTANCE) (AMENDMENT No. 2) (JERSEY)
LAW 202-**

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations has made the following statement –

In the view of the Minister for External Relations, the provisions of the Draft Taxation (Companies – Economic Substance) (Amendment No. 2) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**
Minister for External Relations

Dated: 29th December 2020

REPORT

Background

As Members will be aware, the Government of Jersey gave a political commitment to the EU Code of Conduct Group (Business Taxation) that it would introduce an economic substance test.

To that end, the States Assembly adopted the relevant legislation on 6th December 2018, this being the [Taxation \(Companies – Economic Substance\) \(Jersey\) Law 2019](#). The Code of Conduct Group confirmed Jersey as a cooperative jurisdiction on the basis of this legislation and associated guidance.

It was, however, identified that the Code Group had certain areas they felt still needed resolving, and Jersey together with the other Crown Dependencies agreed to work to address these issues.

One such issue was the situation where a corporate entity is a fund vehicle which manages its own investments rather than appointing a fund manager. This is referred to as a ‘self-managed fund’.

The view of the Code Group, expressed by the Commission, was that such entities should be within scope for the Economic Substance rules in terms of their fund management activities. This is analogous to such activities which are conducted by separate fund managers which may be appointed by other funds, or by the General Partner in fund vehicles structured as partnerships.

In parallel, the opportunity is being taken to strengthen the general exemption for other fund vehicles which currently rely on guidance, by explicitly introducing this exemption into the legislation.

In November 2019, the Crown Dependencies updated their joint guidance, to confirm these expectations of self-managed funds, and to confirm that legislation would be brought forward in each jurisdiction.

We have engaged on the legislation and supporting guidance since this date. The structure of the economic substance legislation in each Crown Dependency has meant that the legislative structure of the amendments differed.

Legislation has already been amended in both the Isle of Man and Guernsey. These are effective from 1st October 2020 (in Guernsey) and 16th December 2020 (in the Isle of Man).

Funds Exemption

The proposed amendments specifically state that the business activities of collective investment vehicles cannot be relevant activities (subject to a specific article for self-managed funds). This provides greater certainty for industry.

Self-Managed Funds

The proposed amendments to the legislation operate by identifying a self-managed fund as a company which is a fund in Jersey but has not appointed a separate fund manager.

A new Article (*Article 5A*) introduces a test specifically for self-managed funds. The major difference is that unlike for other entities the test can be applied where the company has no gross income. The reasons are that the fund management activities (of themselves) do not produce income for the company. Rather, it is the fund assets which

are aimed at generating additional returns from good management decisions. Often the greatest amount of fund management activity takes place in periods where there is low or no income. For example, the initial investment stages of a fund.

The Article otherwise ensures that the economic substance test is applied to self-managed funds in a way that is analogous with the way it would apply to a fund manager, if one had been appointed.

Timing

The European Commission has queried when the legislation would be effective, to ensure that self-managed funds are complying with economic substance. The Commission have suggested that the beginning of 2021 is a date that would be acceptable to Member States.

Financial and manpower implications

There would be no resource implications for the States as a consequence of adopting this draft Law.

Human Rights

The note on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Notes on the Draft Taxation (Companies – Economic Substance) (Amendment No. 2) (Jersey) Law 202-

These Notes have been prepared in respect of the Draft Taxation (Companies – Economic Substance) (Amendment No. 2) (Jersey) Law 202- (“the **draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law extends the effect of the 2019 Law by inserting a requirement that a self-managed fund must satisfy the economic substance test. Article 3 inserts Article 5A into the 2019 Law, which provides that a self-managed fund must satisfy the economic substance test for a financial period that commences on or after 1st January 2021. It sets out how that economic substance test is met and provides that the Comptroller of Revenue may issue and revise guidance about how that test is to be satisfied. It also provides that any such guidance must be published.

This amendment is being brought forward as part of work with the European Union as part of its Code Group process. The 2019 Law regulates how certain economic undertakings must conduct themselves in Jersey. Regulatory requirements of this nature affect property rights, which are protected by Article 1 of Protocol 1 to the European Convention on Human Rights. However, the draft Law does not raise any additional human rights issues to those raised by the 2019 Law and it is proportionate to the legitimate aims of regulation in this area.

In view of this, the draft Law is compatible with the ECHR.

EXPLANATORY NOTE

The Taxation (Companies – Economic Substance) (Amendment No. 2) (Jersey) Law 202-, if passed, will amend the Taxation (Companies – Economic Substance) (Jersey) Law 2019 (the “2019 Law”) by inserting a requirement that a self-managed fund must satisfy the economic substance test.

Article 1 provides that the 2019 Law is amended by this Law.

Article 2 amends Article 3 of the 2019 Law in order to exclude from the definition of “relevant activities” business conducted by collective investment funds, and business conducted by funds that would be collective investment funds had the units in the funds been offered to the public.

Article 3 inserts Article 5A into the 2019 Law, which provides that a self-managed fund must satisfy the economic substance test for a financial period that commences on or after 1st January 2021. It sets out how that economic substance test is met, and provides that the Comptroller of Revenue may issue and revise guidance about how that test is to be satisfied. It also provides that any such guidance must be published.

Article 4 gives the citation and provides that the Law comes into force 7 days after it is registered.



Jersey

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LAW 202-**

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Jersey

DRAFT TAXATION (COMPANIES – ECONOMIC SUBSTANCE) (AMENDMENT No. 2) (JERSEY) LAW 202-

A LAW to further amend the Taxation (Companies – Economic Substance) (Jersey) Law 2019.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Amendment of the Taxation (Companies – Economic Substance) (Jersey) Law 2019

This Law amends the Taxation (Companies – Economic Substance) (Jersey) Law 2019¹.

2 Article 3 (meaning of relevant activities) amended

After Article 3(2) there is inserted –

- “(3) For the purposes of paragraph (1) the following are not relevant activities –
 - (a) business conducted by a collective investment fund (as defined in the Collective Investment Funds (Jersey) Law 1988²);
 - (b) business conducted by a fund that would be a collective investment fund were it not for the offer of units in the fund not being considered to be an offer to the public (as construed in accordance with Article 3 of the Collective Investment Funds (Jersey) Law 1988).”.

3 Article 5A inserted

After Article 5 there is inserted –

“5A Requirement for self-managed fund to meet economic substance test

- (1) This Article –
 - (a) applies to a self-managed fund that is a resident company;
 - (b) applies to a financial period that commences on or after 1st January 2021; and
 - (c) has effect despite Articles 3(3) and 5.
- (2) A self-managed fund must satisfy the economic substance test.
- (3) A self-managed fund meets the economic substance test if –
 - (a) having regard to an activity carried on in Jersey –
 - (i) there are an adequate number of employees in relation to that activity who are physically present in Jersey (whether or not employed by the self-managed fund or by another entity and whether on temporary or long-term contracts),
 - (ii) there is adequate expenditure incurred in Jersey, and
 - (iii) there are adequate physical assets in Jersey;
 - (b) all of the self-managed fund’s core income-generating activities are carried out in Jersey; and
 - (c) if any core income-generating activities are carried out in Jersey for the self-managed fund by another entity, the self-managed fund is able to monitor and control the carrying out of that activity by the other entity.
- (4) The Comptroller may issue guidance on how the economic substance test may be met, including without prejudice to the generality of the foregoing, any expression used in this Article for the purpose of that test, including the meaning of “adequate”.
- (5) Regard must be had to any guidance under paragraph (4) concerning the interpretation of any expression.
- (6) The Comptroller may revise guidance issued under paragraph (4) from time to time and a reference to guidance includes a reference to revised guidance.
- (7) Guidance issued under paragraph (4) must be published by the Comptroller in a manner which the Comptroller considers will bring it to the attention of those most likely to be affected by it.
- (8) In this Article –

“certified fund”, “collective investment fund”, “recognized fund” and “unclassified fund” have the same meanings as in the CIF Law; “CIF Law” means the Collective Investment Funds (Jersey) Law 1988³;

“self-managed fund” means any of the following funds to which a separate manager has not been appointed –

- (a) a certified fund;
- (b) a collective investment fund;
- (c) a recognized fund;
- (d) an unclassified fund;
- (e) a fund that would be a collective investment fund were it not for the offer of units in the fund not being considered to be an offer to the public (as construed in accordance with Article 3 of the CIF Law).”.

4 Citation and commencement

This Law may be cited as the Taxation (Companies – Economic Substance) (Amendment No. 2) (Jersey) Law 202- and comes into force 7 days after it is registered.

ENDNOTES

Table of Endnote References

1	<i>L.3/2019</i>
2	<i>chapter 13.100</i>
3	<i>chapter 13.100</i>