

STATES OF JERSEY



Jersey

DRAFT TAXATION (PARTNERSHIPS – ECONOMIC SUBSTANCE) (JERSEY) LAW 202-

**Lodged au Greffe on 18th May 2021
by the Minister for External Relations and Financial Services
Earliest date for debate: 29th June 2021**

STATES GREFFE



Jersey

DRAFT TAXATION (PARTNERSHIPS – ECONOMIC SUBSTANCE) (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 and Financial Services has made the following statement –

In the view of the Minister for External Relations and Financial Services, the provisions of the Draft Taxation (Partnerships – Economic Substance) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Minister for External Relations and Financial Services

Dated: 17th May 2021

REPORT

1. Background

- 1.1. The Government of Jersey gave a political commitment to the EU Code of Conduct Group (Business Taxation) that it would introduce economic substance legislation in Jersey by the end of December 2018.
- 1.2. At that time, officials engaged with the EU Commission, and at the conclusion of those discussions, a projet was lodged by the Minister with the States Assembly. It was debated and passed and, as a result, economic substance legislation has been effective in Jersey for companies since 1st January 2019 under the [Taxation \(Companies – Economic Substance\) \(Jersey\) Law 2019](#).
- 1.3. Following the passing of this Law, the EU Code of Conduct Group re-confirmed Jersey as a co-operative tax jurisdiction. Based on the same legislation, the OECD's Forum on Harmful Tax Practices also confirmed that Jersey's tax regime is not harmful.
- 1.4. As its title indicates, the existing economic substance law applies only to companies. However, the EU Commission subsequently considered the position of partnerships and sought information on partnerships from a number of jurisdictions, including Jersey.
- 1.5. Following this information gathering process, in 2020 the Code Group informed eight jurisdictions (including Jersey) that it expects economic substance rules to be extended to partnerships, in order to meet the original commitment to its fullest extent. The requirement to extend the rules to partnerships within the specific timeframe below has been endorsed by ECOFIN and those details have been published (see **Appendix 1** for the relevant wording).
- 1.6. The Code Group expects the extended legislation to come into effect from 1st July 2021, with a six-month transition period for existing partnerships.
- 1.7. Officials from the three Crown Dependencies have engaged with the EU Commission jointly to obtain agreement on key policy principles that will underpin the new legislative framework. A public consultation on the extension of economic substance to partnerships was held in Jersey in Q1 of 2021. Revenue Jersey officials have also consulted with industry stakeholders on the development of this draft Law.

2. Reasons for decision

- 2.1. The extension of economic substance to partnerships is regarded by the Code Group as necessary for Jersey to continue meeting its political commitments to them. This is an important reputational matter for Jersey.

3. Resource implications

- 3.1. Additional Revenue Jersey software developments costs of £100,000 are estimated to be required as a result of this decision.
- 3.2. There will be additional administration and compliance activities required by Revenue Jersey from this extension of economic substance. However, it is expected that these activities can be carried out from existing resources.

Human Rights

The notes on the human rights aspects of the draft Law in **Appendix 2** 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 1 TO REPORT

The text of a publicly released report from the Code of Conduct Group to ECOFIN (“The Council of European Finance Ministers”) 20/11/2020 included –

- “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.”*

APPENDIX 2 TO REPORT**Human Rights Notes on the Draft Taxation (Partnerships - Economic Substance) (Jersey) Law 202-**

These Notes have been prepared in respect of the draft Taxation (Partnerships – Economic Substance) (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 Economic Substance test as set out in the Taxation (Companies – Economic Substance) (Jersey) Law 2019 (the “2019 Law”) to partnerships resident in Jersey.

The draft Law requires partnerships – unless one of two exceptions apply – who conduct defined activities in Jersey to have economic substance in Jersey in line with political commitments to implement an extension made to the European Union Code of Conduct Group. On a long-term basis, the draft Law will regulate economic activity in Jersey as financial penalties are applied where a partnership fails to meet the economic substance test and these penalties are increased with repeated failures. Further, if an incorporated limited partnership or limited liability partnership fails to meet the economic substance test for 2 consecutive financial periods, then the Comptroller may report this to the Minister and ultimately may result in the partnership being dissolved or wound up (consequential amendments have been made to the Limited Liability Partnerships (Jersey) Law 2017 and the Incorporated Limited Partnerships (Jersey) Regulations 2011).

The draft Law, in creating new regulatory requirements engages Article 1 of the First Protocol (“A1P1”) to the European Convention on Human Rights (the “ECHR”), which provides certain protections for the property of the individual, however the second paragraph to that Protocol provides that the right to property does not in any way impair the right of the State to control the use of property in accordance with the general interest. This general interest test is clearly met as failure to implement the regulatory requirements would result in Jersey being blacklisted by the European Union thus damaging Jersey’s international relationships and harming its overall economic well-being.

The draft Law requires partnerships to provide the Comptroller with information needs to be obtained in order for economic substance to be determined and where there is a lack of substance this information can be shared with relevant foreign competent authorities. These information requirements may engage Article 8 of the ECHR regarding privacy rights however as with protections for property, these rights are qualified and any interference in this case will be justified as the measures are required for the economic well-being of Jersey.

Provision is made in the draft Law for penalties to be applied for non-compliance with it. Appropriate provision for the purposes of Article 6 ECHR (the right to a fair trial) are made for appealing the imposition of penalties in relation to the following:

- (i) failures to meet the economic substance test; and

(ii) failures to provide information or to provide accurate information.

In each case, the draft Law and Part 6 of the ITL operate to provide an appeal to the Commissioners and then to the Royal Court, which is sufficient for Article ECHR purposes.

The draft Law has also created criminal sanctions for non-compliance in relation to the exercise of information powers and the corresponding obligations on the partnerships. These require criminal prosecution and no express provisions relating to appeals is therefore necessary to safeguard Article 6 rights.

EXPLANATORY NOTE

The Taxation (Companies – Economic Substance) (Jersey) Law 2019 requires companies that carry on relevant activities in Jersey to have economic substance in Jersey. This Law, if adopted, would impose equivalent obligations on partnerships.

Part 1 (Articles 1 to 6) defines terms used in the Law and (in *Article 6*) provides that where the Law imposes obligations on a partnership that does not have separate legal personality, the obligations are imposed on the general partners in the partnership.

Part 2 (Articles 7 to 10) contains matters related to the economic substance test.

Article 7 sets out who must meet the economic substance test. Unless an exception applies, resident partnerships must meet the economic substance test in relation to any of its relevant activities for which it has income. The Article provides 2 exceptions. The first is for partnerships where all partners are individuals who are subject to income tax in Jersey. The second is for partnerships that are not part of a multinational group and do not undertake business activities outside of Jersey.

Article 8 sets out the economic substance test. The test requires that, for its relevant activities, a partnership is managed in Jersey; a partnership has, in Jersey, an adequate number of people performing work, adequate expenditure and adequate physical assets; all of the partnership's core-income generating activities are carried out in Jersey; and, if the core-income generating activities are carried out by someone other than the partnership, the partnership's governing body is able to monitor and control those activities. The Article allows the Comptroller to issue guidance on how the economic substance test may be met and the meaning of expressions used in the Article. When interpreting the Article, regard must be had to that guidance, as well as to any guidance issued under the equivalent provision in the Taxation (Companies – Economic Substance) (Jersey) Law 2019.

Article 9 provides for the Comptroller to determine whether a resident partnership has met the economic substance test for a financial period. The Article imposes a 6-year time limit for the Comptroller to determine that a partnership has not met the economic substance test. The time limit does not apply if the reason for the delay is a deliberate misrepresentation or a negligent or fraudulent action. *Article 9(2)* requires the Comptroller to determine that a high risk IP partnership has not met the economic substance test unless the partnership provides sufficient information to satisfy the Comptroller otherwise.

Article 10 sets out the penalties for failing to meet the economic substance test. If the partnership fails to meet the test for the first time, or for a financial period following a financial period in which the partnership met the test, the penalty is a fine of up to £10,000. However, if the partnership has been notified of its failure to meet the test in a financial period and subsequently fails to meet the test in the next financial period, the penalty is a fine of up to £100,000. After that, the maximum penalty increases by £50,000 for each consecutive financial period in which the partnership fails to meet the test. If a partnership fails to meet the test for 2 consecutive financial periods, the Comptroller may report that to the Minister, which could result in the partnership being wound up (in the case of an incorporated partnership) or dissolved (in the case of a limited liability partnership) or the Minister providing the report to the Jersey Financial Services Commission (in the case of any other partnership).

Part 3 (Articles 11 and 12) relates to information to be provided to the Comptroller.

Article 11 requires a resident partnership to provide any information reasonably required by the Comptroller to determine whether the partnership has satisfied the economic substance test. The Article also allows the Comptroller to serve a notice on any person or partnership to require the provision of any information the Comptroller may reasonably require in order to perform the Comptroller's functions under this Law. A person or partnership served with a notice must comply with it.

Article 12 imposes a penalty of up to £3,000 for failure to provide information required under *Article 11* or for providing inaccurate information.

Part 4 (Articles 13 to 15) contains further duties and powers of the Comptroller.

Article 13 requires the Comptroller to disclose information to the competent authorities of the countries or territories in which the controlling partners, ultimate holding bodies or ultimate beneficial owners of certain partnerships are tax resident. The duty of the Comptroller applies in respect of all high risk IP partnerships and in respect of any partnership that the Comptroller has determined has not met the economic substance test. The duty is limited to disclosures that are authorised by certain agreements, but overrides any legal restriction on the disclosure.

Article 14 allows a person authorised by the Comptroller to enter any business premises to examine and take copies of business documents.

Article 15 contains offences for obstructing an authorised person (which carries a penalty of up to 6 months' imprisonment and an unlimited fine) and for altering, suppressing, or destroying business documents (which carries a penalty of up to 2 years' imprisonment and an unlimited fine).

Part 5 (Articles 16 to 22) provides for appeals, enforcement and other matters.

Article 16 provides that a person can appeal a decision made by the Comptroller under the Law in the same way that a person can appeal against an assessment made under the Income Tax (Jersey) Law 1961.

Article 17 allows penalties under the Law that are not paid on time to be enforced in the same way as income tax that is due and payable.

Article 18 prohibits disclosure of information obtained under the Law except in certain circumstances. *Article 18* also provides that a person who is required to disclose information to the Comptroller under the Law does not breach any confidentiality obligation or other restriction on the disclosure of the information.

Article 19 allows the States, by Regulations, to amend the definition of any term defined in the Law or the amount of any penalty imposed by the Law.

Article 20 introduces the transitional provision in *Schedule 1* of the Law. *Schedule 1* contains one provision that determines when the obligation to meet the economic substance test starts for a partnership.

Article 21 introduces the consequential and related amendments made to other enactments by *Schedule 2*. *Schedule 2*:

- amends the Taxation (Companies – Economic Substance) Law 2019 to align its provisions relating to disclosure of information with the equivalent provisions in this Law;
- amends the Limited Liability Partnerships (Jersey) Law 2017 to allow the Minister to apply to the Royal Court for an order that a limited liability partnership that has not met the economic substance test for 2 or more consecutive years take action to meet the test or for an order that the partnership be dissolved;

- amends the Incorporated Limited Partnerships (Jersey) Regulations 2011 to allow the Minister to apply to the Royal Court for an order that an incorporated limited partnership that has not met the economic substance test for 2 or more consecutive years be wound up; and
- amends the Taxation (Accounting Records) (Jersey) Regulations 2013 to extend their application to include partners in partnerships.

Article 22 states the name of the Law and that it comes into force 7 days after it is registered.



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DRAFT TAXATION (PARTNERSHIPS – ECONOMIC SUBSTANCE) (JERSEY) LAW 202-

A LAW to impose an economic substance test on Jersey resident partnerships.

<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 –

PART 1

INTERPRETATION

1 Interpretation – general

In this Law –

“1961 Law” means the Income Tax (Jersey) Law 1961¹;

“authorised person” means the Comptroller or any person authorised by the Comptroller to perform functions under Article 14;

“banking business” –

- (a) means, in respect of a person, a deposit taking business that the person must be registered to carry on under Article 9 of the Banking Business (Jersey) Law 1991²; but
- (b) does not include business carried on by a person which the Jersey Financial Services Commission is satisfied is registered under the Banking Business (Jersey) Law 1991 solely for business continuity and liable to pay a reduced annual fee accordingly under the Commission’s published fees under Article 15 of the Financial Services Commission (Jersey) Law 1998³;

“Comptroller” means the Comptroller of Revenue described in Article 2 of the Revenue Administration (Jersey) Law 2019⁴;

“connected person”, in relation to a resident partnership, means –

- (a) an individual who is –
 - (i) a partner in the resident partnership, or
 - (ii) the spouse, civil partner, sibling, ancestor or lineal descendant of a partner in the resident partnership; or
- (b) another partnership or person (the “other entity”) if the resident partnership and the other entity –
 - (i) are both controlled by the same person, either alone or with other persons to whom the person is connected in accordance with this definition or with Article 3A(2), (4) or (5) of the 1961 Law, or
 - (ii) are both controlled by groups of 2 or more persons and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom the member is connected in accordance with this definition or with Article 3A(2), (4) or (5) of the 1961 Law;

“core income-generating activities” has the meaning given in Article 5;

“deposit-taking business” has the meaning given in Article 3 of the Banking Business (Jersey) Law 1991⁵;

“distribution and service centre business” –

- (a) means the business of –
 - (i) purchasing, from foreign connected persons, goods ready for sale or component parts or materials for goods and then reselling those component parts, materials or goods, or
 - (ii) providing services to foreign connected persons in connection with such a business; but
- (b) does not include any activity included in any other relevant activity except holding partnership business;

“economic substance test” means the test in Article 8(1);

“finance and leasing business” has the meaning given in Article 3;

“financial period” has the meaning given in Article 4A of the 1961 Law;

“foreign connected person”, in relation to a resident partnership, means a person or partnership that is –

- (a) a connected person of the resident partnership; and
- (b) not resident or regarded as resident in Jersey;

“foreign limited partnership” means a partnership that –

- (a) was established under the Law of a jurisdiction outside of Jersey; and
- (b) consists of one or more persons who are general partners and one or more persons who are limited partners;

“fund management business” means –

- (a) the business of a manager or investment manager referred to in Group 2 in Part 2 of the Schedule to the Collective Investment Funds (Jersey) Law 1988⁶ who is required to hold a permit under that Law to carry on the business;

- (b) the business of a person who is required to be registered under the Financial Services (Jersey) Law 1998⁷ to carry on financial service business (as defined in Article 2 of that Law) and who is –
 - (i) a manager or investment manager referred to in Article 2(10)(a) of that Law,
 - (ii) a trustee referred to in Article 2(10)(c) of that Law, except where a separate manager has been appointed to the fund, or
 - (iii) a member of a partnership referred to in Article 2(10)(d) of that Law, except where a separate manager has been appointed to the fund;
- (c) the business of being a person who is the equivalent of a person referred to in paragraph (b) in respect of a fund that would be a scheme falling within the definition of “collective investment fund” in Article 3 of the Collective Investment Funds (Jersey) Law 1988⁸ except that the offer of units in the scheme or arrangement is not an offer to the public within the meaning of that Article; or
- (d) the business of being a person who is the equivalent of a person referred to in paragraph (b) in respect of a fund that –
 - (i) is not for the purpose of securitisation or repackaging of assets, and
 - (ii) would be a scheme falling within the definition of “collective investment fund” in Article 3 of the Collective Investment Funds (Jersey) Law 1988 except that the fund is prescribed not to constitute a collective investment fund in an Order made for the purposes of paragraph (7) of that Article;

“general partner” means a partner that is not a limited partner;

“headquarters business” –

- (a) means the business of providing any of the following services to one or more foreign connected persons of the resident partnership –
 - (i) the provision of senior management,
 - (ii) the assumption or control of material risk for activities carried out by, or assets owned by, any of those connected persons, or
 - (iii) the provision of substantive advice in connection with the assumption or control of risk referred to in sub-paragraph (ii); but
- (b) does not include anything falling within the definition of finance and leasing business, intellectual property holding business, insurance business or banking business;

“high risk IP partnership” means a partnership that carries on an intellectual property holding business and –

- (a) the partnership –
 - (i) did not create the intellectual property in an intellectual property asset which it holds for the purposes of its business,
 - (ii) acquired the intellectual property asset –
 - (A) from a connected person, or

- (B) in consideration for funding research and development by another person situated in a country or territory other than Jersey, and
- (iii) licences the intellectual property asset to one or more connected persons or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by foreign connected persons; or
- (b) the partnership does not carry out research and development, branding or distribution as part of its core income-generating activities;

“holding body” has the meaning given in Article 2 of the Companies (Jersey) Law 1991⁹, except that in that Article –

- (a) “body corporate” is to be read as including a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 2017¹⁰; and
- (b) paragraph (1) (which defines “subsidiary”) is to be read with the necessary modifications so that it could apply to a limited liability partnership;

“holding partnership” means a resident partnership which –

- (a) is a holding body;
- (b) has as its primary function the acquisition and holding of shares or equitable interests in companies; and
- (c) does not carry on any commercial activity;

“holding partnership business” means the business of being a holding partnership;

“income”, in respect of an intellectual property asset, includes –

- (a) royalties;
- (b) income from a franchise agreement; and
- (c) income from licensing the intangible asset;

“incorporated limited partnership” means an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011¹¹;

“insurance business”, in respect of a person, means long-term business or general business within the meaning of Article 1 of the Insurance Business (Jersey) Law 1996¹² which person must be authorised to carry on by a Category A permit or Category B permit under that Law;

“intellectual property holding business” means the business of holding or exploiting intellectual property assets;

“intellectual property asset” means any intellectual property right in intangible assets, including but not limited to copyright, patents, trade marks, brand, and technical know-how, from which identifiable income accrues to the business (such income being separately identifiable from any income generated from any tangible asset in which the right subsists);

“limited liability partnership” means a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 2017¹³;

“limited partner” means a partner whose liability towards the partnership’s debts is legally limited;

“limited partnership” means a limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994¹⁴;

“Minister” means the Minister for Treasury and Resources;

“partner”, in relation to a partnership, means any partner in the partnership (regardless of whether the partner is a general partner or limited partner);

“partnership” includes –

- (a) an incorporated limited partnership;
- (b) a limited liability partnership;
- (c) a limited partnership;
- (d) a separate limited partnership;
- (e) a foreign limited partnership;
- (f) any other arrangement that is subject to an assessment under Article 74 of the 1961 Law;

“relevant activities” has the meaning given in Article 4;

“resident partnership” has the meaning given in Article 2;

“separate limited partnership” means a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011¹⁵;

“ship” has the meaning given in Article 1 of the Shipping (Jersey) Law 2002¹⁶ but does not include –

- (a) a fishing vessel (as defined by that Article);
- (b) a small ship (as defined by that Article); or
- (c) a ship to the extent that it is used as a pleasure vessel (as defined by Article 169(6) of that Law);

“shipping business” means any of the following activities involving the operation of a ship anywhere in the world other than solely between Jersey and Guernsey or within the territorial waters of Jersey –

- (a) the business of transporting, by sea, persons, animals, goods or mail;
- (b) the renting or chartering of ships for the purpose described in paragraph (a);
- (c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship;
- (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea;
- (e) the management of the crew of a ship.

2 Meaning of “resident partnership”

- (1) A partnership formed under Jersey law is a resident partnership unless its place of effective management is outside of Jersey in a country or territory where –

- (a) the highest rate at which a company or individual may be charged to tax on any part of its income is 10% or higher; or
 - (b) the partnership is required to satisfy a test that is substantially the same as the economic substance test.
- (2) A partnership not formed under Jersey law is a resident partnership if its place of effective management is in Jersey.
- (3) In this Article –
- (a) a partnership’s place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the partnership’s business as a whole are in substance made; and
 - (b) a partnership will have one place of effective management at any one time (even if there is more than one place where management decisions are made).
- (4) The Comptroller –
- (a) may issue guidance on the meaning of “place of effective management”; and
 - (b) must publish any guidance issued (and any amendments to the guidance) in a manner which the Comptroller considers will bring it to the attention of those most likely to be affected by it.
- (5) In determining the meaning of “place of effective management”, a person must have regard to any guidance issued under paragraph (4).

3 Meaning of “finance and leasing business”

- (1) In this Law, “finance and leasing business” –
- (a) means the business of providing credit facilities of any kind for consideration; but
 - (b) does not include any activity falling within the definition of “banking business”, “fund management business” or “insurance business”.
- (2) For the purposes of paragraph (1) but without limiting the generality of that paragraph –
- (a) consideration may include consideration by way of interest;
 - (b) the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with –
 - (i) the supply of goods by hire purchase,
 - (ii) leasing other than any lease granting an exclusive right to occupy land, or
 - (iii) conditional sale or credit sale.
- (3) Where an advance or credit repayable by a customer to a person is assigned to another person or partnership, that other person or partnership is deemed to be providing the credit facility for the purposes of paragraph (1).

4 Meaning of “relevant activities”

- (1) In this Law, “relevant activities” means any of the following activities –
 - (a) banking business;
 - (b) distribution and service centre business;
 - (c) finance and leasing business;
 - (d) fund management business
 - (e) headquarters business;
 - (f) holding partnership business;
 - (g) insurance business;
 - (h) intellectual property holding business;
 - (i) shipping business.
- (2) However, “relevant activities” does not include –
 - (a) business conducted by a collective investment fund (as defined in the Collective Investment Funds (Jersey) Law 1988¹⁷);
 - (b) business conducted by a fund that would be a collective investment fund except that the offer of units in the fund is not an offer to the public (within the meaning given in Article 3 of the Collective Investment Funds (Jersey) Law 1988); or
 - (c) business conducted by a fund that –
 - (i) is not for the purpose of securitisation or repackaging of assets, and
 - (ii) would be a collective investment fund except that the fund is prescribed not to constitute a collective investment fund in an Order made for the purposes of Article 3(7) of the Collective Investment Funds (Jersey) Law 1988.
- (3) If a partner in a partnership has been required to satisfy the economic substance test in this Law or in the Taxation (Companies – Economic Substance) (Jersey) Law 2019¹⁸ in relation to an activity (the “partner’s activity”), then for the purpose of determining whether an activity carried on by or through the partnership is a relevant activity, the definitions of the terms listed in paragraph (1) must be read as if the partner’s activity was undertaken by the partnership.

5 Meaning of “core income-generating activity”

In this Law, “core income-generating activity” includes any of the following activities –

- (a) in respect of banking business –
 - (i) raising funds or managing risk, including credit, currency and interest risk,
 - (ii) taking hedging positions,
 - (iii) providing loans, credit or other financial services to customers,
 - (iv) managing capital and preparing reports and returns to the Jersey Financial Services Commission or any body or entity

- with equivalent functions relating to the supervision or regulation of such business;
- (b) in respect of distribution and service centre business –
 - (i) transporting and storing goods, components and materials,
 - (ii) managing stocks,
 - (iii) taking orders,
 - (iv) providing consulting or other administrative services;
 - (c) in respect of finance and leasing business –
 - (i) agreeing funding terms,
 - (ii) identifying and acquiring assets to be leased (in the case of leasing),
 - (iii) setting the terms and duration of any financing or leasing,
 - (iv) monitoring and revising any agreements,
 - (v) managing any risks;
 - (d) in respect of fund management business –
 - (i) taking decisions on the holding and selling of investments,
 - (ii) calculating risk and reserves,
 - (iii) taking decisions on currency or interest fluctuations and hedging positions,
 - (iv) preparing reports and returns to investors and the Jersey Financial Services Commission or any body or entity with equivalent functions relating to the supervision or regulation of such business;
 - (e) in respect of headquarters business –
 - (i) taking relevant management decisions,
 - (ii) incurring expenditures on behalf of group entities,
 - (iii) co-ordinating group activities;
 - (f) in respect of holding partnership business, all activities related to that business;
 - (g) in respect of insurance business –
 - (i) predicting and calculating risk,
 - (ii) insuring or re-insuring against risk and providing insurance business services to clients;
 - (h) in respect of intellectual property holding business –
 - (i) taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the intangible asset generating income,
 - (ii) taking the strategic decisions and managing (as well as bearing) the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the intangible asset,
 - (iii) carrying on the underlying trading activities through which the intangible assets are exploited leading to the generation of revenue from third parties,

- (iv) research and development, branding or distribution;
- (i) in respect of shipping business –
 - (i) managing crew (including hiring, paying and overseeing crew members),
 - (ii) overhauling and maintaining ships,
 - (iii) overseeing and tracking deliveries,
 - (iv) determining what goods to order and when to deliver them, organising and overseeing voyages.

6 Liability of partners - partnerships without separate legal personality

- (1) This Article applies in respect of a partnership that does not have separate legal personality.
- (2) A requirement in this Law for the partnership to take an action is a requirement for the general partners in the partnership to take that action, and all general partners are jointly liable for any penalty resulting from a failure for the action to be taken.

PART 2

ECONOMIC SUBSTANCE TEST

7 Who must meet economic substance test

- (1) Unless an exception in this Article applies, a resident partnership must satisfy the economic substance test in relation to any relevant activity carried on by or through it for which it has gross income.
- (2) A resident partnership is not required to satisfy the economic substance test in relation to a relevant activity carried on by or through it if all of the partners in the partnership are individuals who are subject to income tax in Jersey.
- (3) A resident partnership is not required to satisfy the economic substance test in relation to a relevant activity carried on by or through it in a financial period if, during that financial period, –
 - (a) the resident partnership is not part of a multinational group; and
 - (b) the resident partnership does not undertake business activities outside of Jersey.
- (4) A resident partnership is part of a multinational group if –
 - (a) under international accounting standards, the partnership's income and expenses would be a part of the consolidated results of a group of enterprises; and
 - (b) one or more of the persons or partnerships in the group –
 - (i) is not a tax resident in Jersey, or
 - (ii) has one or more permanent establishments outside of Jersey.
- (5) In this Article, –

“international accounting standards” means the International Financial Reporting Standards set by the International Accounting Standards Board;

“permanent establishment”, in relation to a person or partnership, includes a branch, a factory, shop, workshop, quarry or a building site, and a place of management of the person or partnership;

“undertake business activities”, in relation to a resident partnership, –

- (a) means performing services for customers, or manufacturing or producing goods for sale to or for use by customers, regardless of whether the service is performed or the goods are manufactured or produced –
 - (i) wholly or in part, or
 - (ii) through a permanent establishment of the resident partnership; but
- (b) does not include performing services for the benefit of the resident partnership, rather than a customer.

8 Economic substance test

- (1) A partnership meets the economic substance test in relation to a relevant activity if –
 - (a) it is managed in Jersey in relation to that activity;
 - (b) having regard to the level of relevant activity carried on in Jersey –
 - (i) there are an adequate number of people performing work in relation to that activity who are physically present in Jersey (whether partners or employees, whether employed by the resident partnership or another entity or partnership 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;
 - (c) all of the partnership’s core-income generating activities are carried out in Jersey; and
 - (d) the partnership’s governing body is able to monitor and control the carrying out of core income-generating activities carried out in Jersey for the partnership by another entity or partnership (if any).
- (2) A partnership is managed in Jersey in relation to an activity if –
 - (a) the partnership’s governing body meets in Jersey at an adequate frequency having regard to the amount of decision-making required at that level;
 - (b) the majority of the partnership’s governing body are physically present at those meetings;
 - (c) records are kept of the strategic decisions made at those meetings;
 - (d) the members of the governing body, as a whole, have the necessary knowledge and expertise to discharge their duties; and
 - (e) the records of the partnership, including the records referred to in sub-paragraph (c), are kept in Jersey.

- (3) In paragraph (2), unless guidance to the contrary is issued by the Comptroller under paragraph (4), “governing body”, in relation to a partnership, means –
 - (a) the person or group of persons responsible for making the partnership’s strategic and management decisions; but
 - (b) if that person or group is not able to be identified, all of the partners in the partnership.
- (4) The Comptroller –
 - (a) may issue guidance on how the economic substance test may be met;
 - (b) may issue guidance on the meaning of any expression used in this Article for the purpose of the economic substance test; and
 - (c) must publish any guidance issued (and any amendments to the guidance) in a manner which the Comptroller considers will bring it to the attention of those most likely to be affected by it.
- (5) In determining whether the economic substance test has been met, or the meaning of an expression used in this Article, a person must have regard to any guidance issued under paragraph (2) or under Article 5(4) of the Taxation (Companies – Economic Substance) (Jersey) Law 2019¹⁹.

9 Assessment of whether economic substance test is met

- (1) The Comptroller may determine that a resident partnership has not met the economic substance test for a financial period –
 - (a) up to 6 years after the end of the financial period; or
 - (b) if the Comptroller is not able to make a determination within the 6-year period by reason of any deliberate misrepresentation or negligent or fraudulent action by the resident partnership or by any other person, at any time.
- (2) The Comptroller must determine that a high risk IP partnership has not met the economic substance test for a financial period unless the partnership provides sufficient information to satisfy the Comptroller that the test is met.

10 Penalties for failing to meet economic substance test

- (1) A resident partnership is liable to a fine not exceeding £10,000 if –
 - (a) the Comptroller determines that the partnership has failed to meet the economic substance test for a financial period; and
 - (b) the partnership has not, during the previous financial period, been notified of a determination that the partnership has not met the economic substance test.
- (2) A resident partnership is liable to a fine not exceeding the amount calculated under paragraph (3) if –
 - (a) the Comptroller determines that the partnership has failed to meet the economic substance test for a financial period; and

- (b) during the previous financial period, the partnership has been notified of a determination that the partnership has not met the economic substance test.
- (3) The maximum amount of the penalty a partnership is liable to under paragraph (3) is –
- $$A = £50,000 \times (B + 1)$$
- where –
- A is the maximum amount of the penalty; and
- B is the number previous consecutive financial periods, immediately before the financial period the penalty relates to, in which the Comptroller has notified the partnership of its failure to meet the economic substance test.
- (4) If the Comptroller determines that a partnership has failed to meet the economic substance test for a financial period, the Comptroller must determine the amount of the penalty and must notify the partnership –
- that the Comptroller has determined that the partnership does not meet the economic substance test for the financial period;
 - of the reasons for the determination;
 - of the amount of the penalty imposed on the partnership;
 - of the date from which penalty is due, which must not be less than 30 days after the Comptroller issues the notice;
 - of the action the Comptroller considers the partnership should take to meet the economic substance test for future financial periods; and
 - of the partnership's right of appeal under Article 16.
- (5) If the Comptroller determines that a partnership is liable to a fine under paragraph (2), –
- the Comptroller may provide the Minister with a report stating that the partnership has failed to meet the economic substance test, along with any other information that the Comptroller considers relevant; and
 - the Comptroller must, in the notice issued under paragraph (4), notify the partnership that the Comptroller may make a report to the Minister.
- (6) If the Minister receives a report in relation to a partnership under paragraph (5), the Minister may –
- apply to the Court for an order under Regulation 19 of the Incorporated Limited Partnerships (Jersey) Regulations 2011²⁰, if the partnership is an incorporated limited partnership;
 - apply to the Court for an order under Article 23A of the Limited Liability Partnerships (Jersey) Law 2017²¹, if the partnership is a limited liability partnership; or
 - provide the report to the Jersey Financial Services Commission (established by the Financial Services Commission (Jersey) Law 1998²²), if the partnership is not an incorporated limited partnership or a limited liability partnership.

PART 3

REQUIREMENT TO PROVIDE INFORMATION

11 Requirement to provide information

- (1) A resident partnership must provide any information reasonably required by the Comptroller in order to assist the Comptroller in making a determination under Article 9.
- (2) The Comptroller may serve notice on any person or partnership requiring the person or partnership to provide, within the period specified in the notice and at such place as is specified in the notice, such documents and information as the Comptroller may reasonably require for the purpose of facilitating the Comptroller's exercise of functions under this Law.
- (3) A person or partnership served with a notice under paragraph (2) must provide the information in the manner and within the period specified in the notice.

12 Penalties for failure to provide information or for providing inaccurate information

- (1) A person or partnership who fails to comply with a requirement to provide information or documents under Article 11 is liable to a penalty not exceeding £3,000.
- (2) A person or partnership who is required to provide information under Article 11 is liable to a penalty not exceeding £3,000 if the person or partnership provides inaccurate information and –
 - (a) knows of the inaccuracy at the time the information is provided but does not inform the Comptroller at that time; or
 - (b) discovers the inaccuracy after the information is provided and fails to take reasonable steps to inform the Comptroller.
- (3) A person or partnership is not liable to a penalty under this Article if the person or partnership satisfies the Comptroller that the person or partnership has a reasonable excuse.
- (4) If a person or partnership is liable to a penalty, the Comptroller must determine the amount of the penalty and must notify the person or partnership of –
 - (a) the reasons for imposing the penalty;
 - (b) the amount of the penalty imposed;
 - (c) the date from which the penalty is due, which must not be less than 30 days after the Comptroller issues the notice; and
 - (d) the right of appeal under Article 16.

PART 4

COMPTROLLER'S DUTIES AND POWERS

13 Exchange of information to competent authorities

- (1) This Article applies if the Comptroller determines that a resident partnership has not met the economic substance test for a financial period.
- (2) The Comptroller must provide any information provided under Article 11 relating to the partnership for the financial period to the competent authority of the countries or territories in which the following people or partnerships are tax residents –
 - (a) a controlling partner of the partnership;
 - (b) the ultimate holding body of the controlling partner;
 - (c) the ultimate beneficial owner of the partnership.
- (3) The Comptroller must provide any information provided under Article 11 relating to a high risk IP partnership (regardless of whether the partnership has met the economic substance test) to the competent authority of the countries or territories in which the following people or partnerships are tax residents –
 - (a) a controlling partner of the partnership;
 - (b) the ultimate holding body of the controlling partner;
 - (c) the ultimate beneficial owner of the partnership.
- (4) This Article applies –
 - (a) only to the extent to which the provision of information is permitted under –
 - (i) a bilateral agreement made between Jersey and a country or territory, or
 - (ii) the OECD and Council of Europe (2011), Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol; but
 - (b) despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.
- (5) In this Article, –

“competent authority”, in respect of a country or territory other than Jersey, means the authority designated in or for the purposes of an approved agreement or an approved obligation within the meaning of the Taxation (Implementation) (Jersey) Law 2004²³;

“controlling partner”, in relation to a partnership, means a person or partnership that is entitled to 50% or more of the income or property of that partnership.

14 Power to enter business premises and examine business documents

- (1) An authorised person may, for the purpose of investigating any issue relating to compliance with a provision of this Law, examine and take copies of any business document that is located on business premises.

- (2) In order to exercise that power, an authorised person may –
 - (a) enter business premises at any reasonable hour; and
 - (b) by notice require any person to produce any specified business document at the business premises where the document is located.
- (3) In this Article, –

“business document” means any document –

 - (a) that relates to the carrying on of a business, trade, profession or vocation by a person or partnership; and
 - (b) that forms part of any record under any enactment;

“business premises” means premises used in connection with the carrying on of a business, trade, profession or vocation.

15 Offences and penalties for obstructing authorised person or altering business documents

- (1) A person who, without reasonable excuse, obstructs an authorised person exercising a power under Article 14 –
 - (a) commits an offence; and
 - (b) is liable to imprisonment for a term not exceeding 6 months and to a fine.
- (2) A person who, without reasonable excuse, fails to provide such reasonable assistance as an authorised person may require when exercising a power under Article 14 –
 - (a) commits an offence; and
 - (b) is liable to imprisonment for a term not exceeding 6 months and to a fine.
- (3) A person who intentionally alters, suppresses or destroys any document that has been specified in a notice under Article 11(2) –
 - (a) commits an offence; and
 - (b) is liable to imprisonment for a term of not exceeding 2 years and to a fine.

PART 5

APPEALS, ENFORCEMENT AND OTHER MATTERS

16 Right of appeal

- (1) A person may appeal to the Commissioners (as defined in Article 3(1) of the 1961 Law) against a decision made by the Comptroller under this Law by giving notice in writing to the Comptroller within 30 days after receiving notification of the decision.
- (2) Part 6 of the 1961 Law applies, with the necessary modifications, to an appeal under paragraph (1) as if it were an appeal against an assessment made under that Law.

17 Enforcement of penalties

- (1) A penalty imposed under this Law must be paid before the end of the period of 30 days beginning with –
 - (a) the date stated as the date from which the penalty is due in the notification of the penalty; or
 - (b) if the decision to impose the penalty or the determination of the amount of the penalty is appealed, the date on which the appeal is finally determined or withdrawn.
- (2) A penalty under this Law may be enforced as if it were income tax charged in an assessment and due and payable.

18 Disclosure of information and confidentiality

- (1) A person must not disclose information obtained under this Law unless –
 - (a) the disclosure is expressly required by this Law;
 - (b) every person to whom the information relates consents to the disclosure;
 - (c) the disclosure is made for the purpose of any civil proceedings (whether or not in Jersey), including any investigation as to whether to institute any civil proceedings, relating to a matter in respect of which the Comptroller has functions under a Law;
 - (d) the disclosure is made for the purpose of investigating whether or not an offence has been committed (whether or not in Jersey), or for the institution of, or otherwise for the purpose of, any criminal proceedings (whether or not in Jersey);
 - (e) the disclosure –
 - (i) is of statistical information only,
 - (ii) is made to an administration of the States for which a Minister has responsibility, and
 - (iii) is made for the purpose of assisting in the development of public policy; or
 - (f) the disclosure is of statistical information only and is made to an international body for the purpose of monitoring the implementation of this Law.
- (2) A person who discloses information to the Comptroller in accordance with this Law does not breach –
 - (a) any obligation of confidentiality in relation to the information disclosed; or
 - (b) any other restriction on the access to or disclosure of the information accessed.

19 Regulations

- (1) The States may by Regulations amend –
 - (a) the definition of any term defined in this Law; and
 - (b) a penalty that may be imposed under this Law.

- (2) Regulations under this Article may include any consequential, incidental, supplementary, transitional and savings provisions as the States think necessary or expedient, including provisions which amend any other enactment.

20 Transitional arrangements

Schedule 1 gives effect to transitional arrangements.

21 Consequential and related amendments

Schedule 2 makes consequential and related amendments to other enactments.

22 Citation and commencement

This Law may be cited as the Taxation (Partnerships – Economic Substance) (Jersey) Law 202- and comes into force 7 days after it is registered.

SCHEDULE 1

(Article 20)

TRANSITIONAL PROVISION**1 Date from which economic substance test must be met**

The Comptroller must not make a determination under Article 9 in respect of a resident partnership for a financial period that started before –

- (a) 1st July 2021, if the partnership was established on or after that date but before 1st January 2022; or
- (b) 1st January 2022, for all other partnerships.

SCHEDULE 2

(Article 21)

CONSEQUENTIAL AND RELATED AMENDMENTS**1 Taxation (Companies – Economic Substance) (Jersey) Law 2019 amended**

- (1) After Article 8(3) of the Taxation (Companies – Economic Substance) (Jersey) Law 2019²⁴ there is inserted –

“(4) This Article applies despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.”.

- (2) For Article 15 of the Taxation (Companies – Economic Substance) (Jersey) Law 2019²⁵ there is substituted –

“15 Disclosure of information and confidentiality

- (1) A person must not disclose information obtained under this Law unless –

- (a) the disclosure is expressly required by this Law;
- (b) every person to whom the information relates consents to the disclosure;
- (c) the disclosure is made for the purpose of any civil proceedings (whether or not in Jersey), including any investigation as to whether to institute any civil proceedings, relating to a matter in respect of which the Comptroller has functions under a Law;
- (d) the disclosure is made for the purpose of investigating whether or not an offence has been committed (whether or not in Jersey), or for the institution of, or otherwise for the purpose of, any criminal proceedings (whether or not in Jersey);
- (e) the disclosure –
 - (i) is of statistical information only,
 - (ii) is made to an administration of the States for which a Minister has responsibility, and
 - (iii) is made for the purpose of assisting in the development of public policy; or
- (f) the disclosure is of statistical information only and is made to an international body for the purpose of monitoring the implementation of this Law.

- (2) A person who discloses information to the Comptroller in accordance with this Law does not breach –

- (a) any obligation of confidentiality in relation to the information disclosed; or

- (b) any other restriction on the access to or disclosure of the information accessed.”.

2 Limited Liability Partnerships (Jersey) Law 2017 amended

After Article 23 of the Limited Liability Partnerships (Jersey) Law 2017²⁶ there is inserted –

“23A Economic substance test

- (1) If the Minister for Treasury and Resources receives a report from the Comptroller of Revenue under Article 10(5) of the Taxation (Partnerships – Economic Substance) (Jersey) Law 202-²⁷ that a limited liability partnership has not met the economic substance test within the meaning of that Law, the Minister for Treasury and Resources may apply to the Court for an order under this Article.
- (2) If the Court is satisfied that the limited liability partnership has not met the economic substance test, the Court may make an order –
 - (a) requiring the limited liability partnership to take any action specified in the order for the purpose of meeting the test, including (but not limited to) –
 - (i) regulating the conduct of the limited liability partnership’s affairs in the future,
 - (ii) requiring the limited liability partnership to do an act, or to refrain from doing or continuing an act,
 - (iii) authorising civil proceedings to be brought in the name and on behalf of the limited liability partnership by such person or persons and on such terms as the court may direct; or
 - (b) requiring the dissolution of the limited liability partnership.
- (3) If the Court makes an order requiring the registrar to dissolve the limited liability partnership, –
 - (a) the Court may appoint any person to manage the dissolution and the Comptroller may apply to the Court to change or remove the dissolution manager; and
 - (b) the registrar must –
 - (i) issue a certificate of dissolution of the limited liability partnership,
 - (ii) serve the certificate on the limited liability partnership and secretary (if any),
 - (iii) register the certificate, and
 - (iv) publish a notice stating that the certificate has been issued.”.

3 Incorporated Limited Partnerships (Jersey) Regulations 2011 amended

After Regulation 19(3) of the Incorporated Limited Partnerships (Jersey) Regulations 2011²⁸ there is inserted –

“(3A) An incorporated limited partnership may be wound up by the Royal Court if –

- (a) the Minister for Treasury and Resources receives a report from the Comptroller of Revenue under Article 10(5) of the Taxation (Partnerships – Economic Substance) (Jersey) Law 202-²⁹ that an incorporated limited partnership has not met the economic substance test within the meaning of that Law;
- (b) the Minister for Treasury and Resources applies to the court for an order under this Regulation; and
- (c) it is reasonably foreseeable that the incorporated limited partnership will fail to meet the economic substance test in its current or future financial periods.”.

4 Taxation (Accounting Records) (Jersey) Regulations 2013 amended

After Article 1(3) of the Taxation (Accounting Records) (Jersey) Regulations 2013³⁰ there is inserted –

“(4) In these Regulations, “person” includes a partnership and an obligation for a person to take an action is, in the case of a partnership, an obligation for both the partnership and the general partners in the partnership to take that action.”.

ENDNOTES

Table of Endnote References

1	<i>chapter 24.750</i>
2	<i>chapter 13.075</i>
3	<i>chapter 13.250</i>
4	<i>L.13/2019</i>
5	<i>chapter 13.075</i>
6	<i>chapter 13.100</i>
7	<i>chapter 13.225</i>
8	<i>chapter 13.100</i>
9	<i>chapter 13.125</i>
10	<i>chapter 13.475</i>
11	<i>chapter 13.370</i>
12	<i>chapter 13.425</i>
13	<i>chapter 13.475</i>
14	<i>chapter 13.500</i>
15	<i>chapter 13.780</i>
16	<i>chapter 19.885</i>
17	<i>chapter 13.100</i>
18	<i>L.3/2019</i>
19	<i>L.3/2019</i>
20	<i>chapter 13.370.30</i>
21	<i>chapter 13.475</i>
22	<i>chapter 13.250</i>
23	<i>chapter 17.850</i>
24	<i>L.3/2019</i>
25	<i>L.3/2019</i>
26	<i>chapter 13.475</i>
27	<i>P.47/2021</i>
28	<i>chapter 13.370.30</i>
29	<i>P.47/2021</i>
30	<i>chapter 17.850.05</i>