

Bulletin - 2020 Guernsey Substance Amendment Regulations

News - 11/09/2020

The States of Guernsey has recently approved The Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2020 (the **2020 Amendment Regulations**), confirming the treatment of collective investment schemes as previously set out in the guidance published in November 2019.

The key matters arising out of the 2020 Amendment Regulations are:

1. Guernsey registered and authorised collective investment schemes are confirmed explicitly as not being subject to the Guernsey Substance Regulations, except where they constitute a 'self-managed collective investment scheme' as defined in the 2020 Amendment Regulations.
2. As flagged in the Guidance Notes published in November 2019, if a fund constitutes a self-managed collective investment scheme, that fund will be deemed to carry on the restricted activity of fund management and will be deemed to have income arising from such activity. As such a self-managed fund will fall into the scope of the Guernsey Substance Regulations and will be required to demonstrate its nexus to Guernsey as if it were a fund manager licensed in Guernsey under the Substance Regulations.

For these purposes, a self-managed collective investment scheme is defined as:

1. a company
2. which is a registered or authorised collective investment scheme; and
3. has no other person or body conducting 'fund management' in respect of it.

'Fund management' for the purposes of the 2020 Amendment Regulations is described as exercising any managerial function in relation to an investment or in relation to the assets underlying an investment. This definition reflects the definition of 'management' of controlled

investments in the Protection of Investors (Bailiwick of Guernsey) Law, 1989.

The 2020 Amendment Regulations come into force on 1 October 2020 and so boards of corporate funds which do not have a third party fund manager appointed to undertake fund management should seek advice as soon as possible on whether they fall within the definition of a 'self-managed fund' under the 2020 Amendment Regulations and, if so, the practical implications for the fund, its structure and governance.

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