

Tax update briefing 2024: Non-Executive Directors, Tax and Financial Directors





Welcome

Stuart Macklin



Introducing today's speakers



Stuart Macklin
Tax Director - Jersey



Kelly Tadier
Tax Senior Manager - Jersey



Laura Corbet
Tax Senior Manager - Guernsey

What we'll cover today

Welcome and introductions: **Stuart Macklin**

1

Signing returns - key risks

2

Economic Substance - a changing landscape

3

Pillar II considerations

4

FATCA/ CRS Governance

5

Revenue Service Audits

6

Recommendations



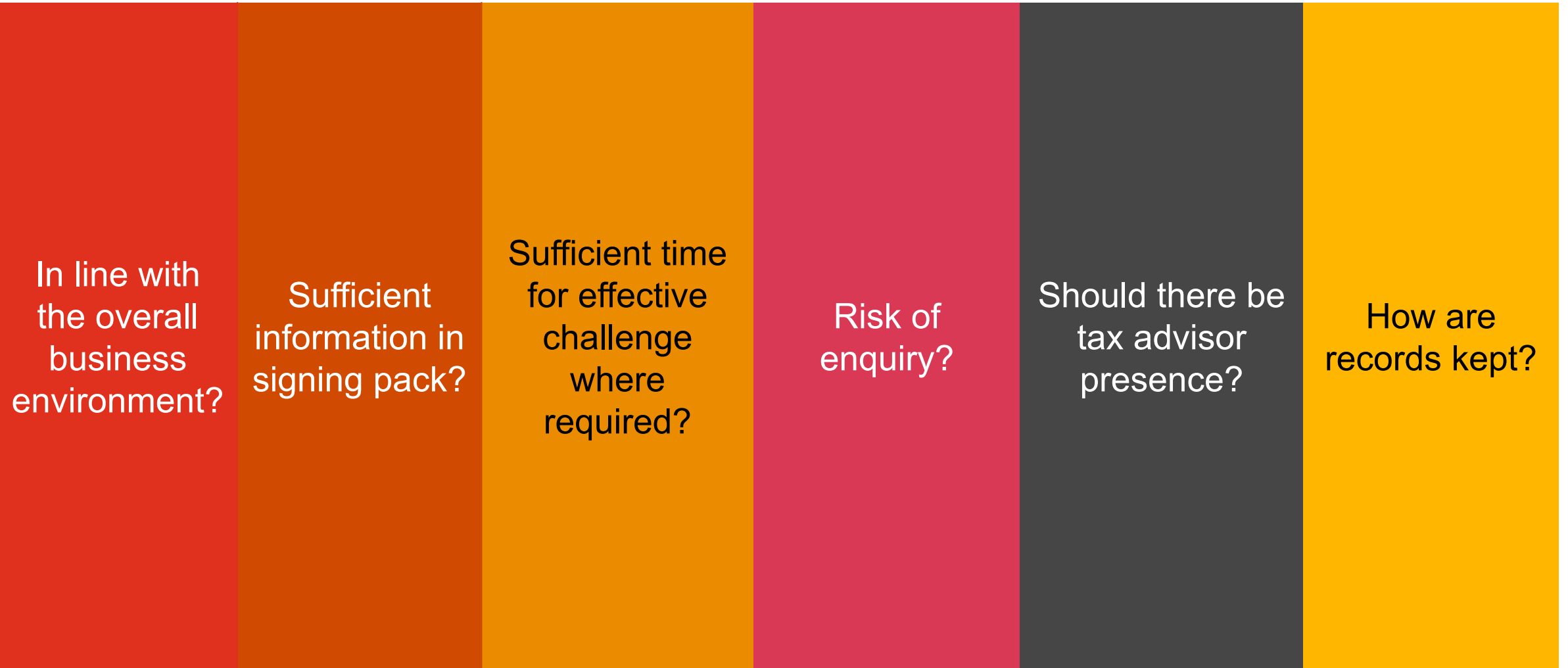


1.

Signing returns - key risks



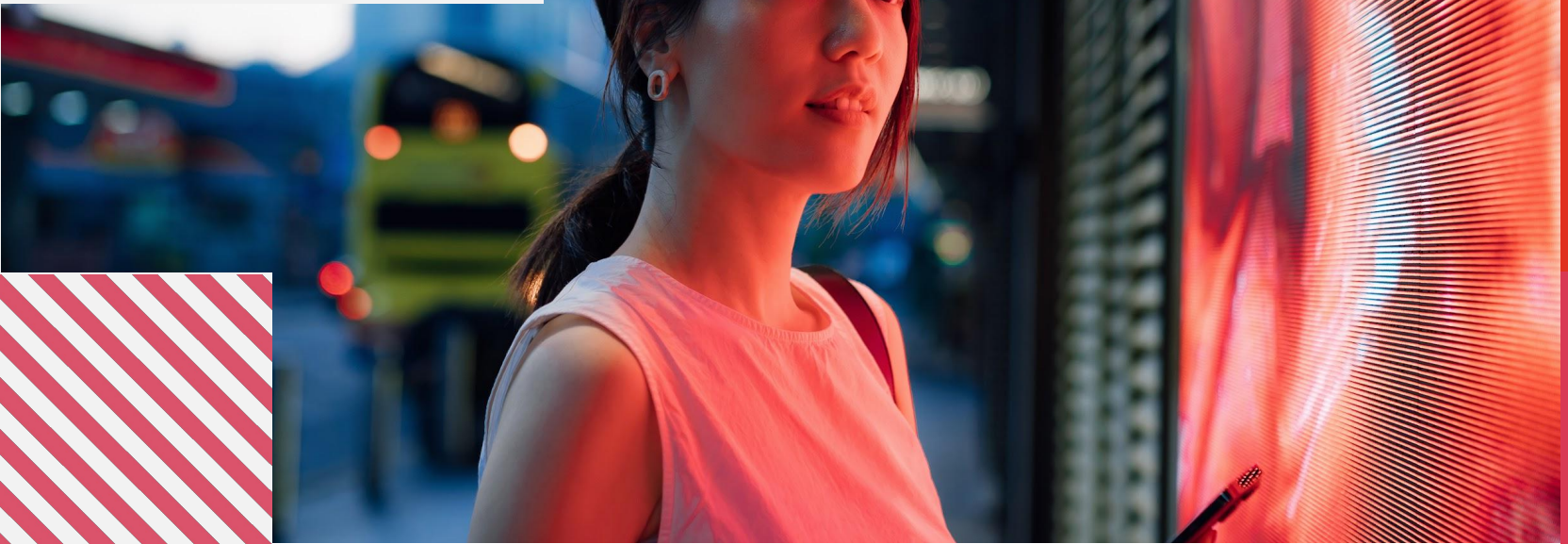
As a NED, what should I consider before signing?





2.

Economic Substance - a changing landscape



Economic Substance who is covered and when?

Relatively new still with the majority of partnerships completing first reporting for the 2022 period.

Dates

- New partnerships (established from 1 July 2021 onwards) within scope from 1 July 2021.
- Pre-existing partnerships from first accounting period commencing on/ after 1 January 2022.
- Corporate regime - now well established, in place since 1 January 2019.

Key approaching deadlines

- Registration of partnerships established in 2023 - 14 July 2024 (Guernsey).
- Return filing - 30 November 2024 (Jersey).
- Return filing - 31 January 2025 (Guernsey).
- Note - the Guernsey deadline will be November from 2024 Year of Charge onward.



Place of Effective Management



Will typically follow the GP residence, but need to be careful and aware of potential nuances. In simple terms, PoEM seen as potentially being a step lower than CM&C, which focuses on the highest levels of decisions making generally.

NEDs should consider the below factors as indicators that a wider PoEM analysis may need to be undertaken.

Where does majority of the partnership/ GP meetings take place?

Where are the strategic decisions regarding sale/ purchase or dissolution/ liquidation of assets take place?

Where does the partnership have any permanent establishments (if any)?

Which jurisdiction's laws govern the legal status of the partnership?

Where are the legal titles/ records and account records kept?

If the partnership has a publicly designated headquarters, where is it located?

Potential Partnership exemptions



Am I aware of them?

- Domestic Exemption
- Individual Exemption
- Collective Investment Schemes
- PoEM

Is there explanation as to why we are/ aren't claiming?

PoEM - Guernsey, do I need to file a return?

Is the fact pattern an accurate reflection?

Document challenge



Economic Substance

Learnings from recent filings - companies

Greater clarity required and a consistent taxpayer approach

- Interpretive differences common, i.e. expenditure in Guernsey.
- FTE recording - a key area of concern at the jurisdictional level.
- NEDs will see a variety of interpretations.

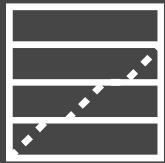
Basic errors persist

- Basic errors are still being made on tax returns.
- Revenue Service are now sending more detailed enquiries and therefore responses should be robust.

The early bird...

- Those who undertook their annual assessments earlier found the return completion easier.
- Incorrect classifications identified after the year end, during tax return preparation.
- Remember it's an annual assessment.

Key aspects for Non-Executive Directors



Am I aware of?

Policies and procedures

Health checks

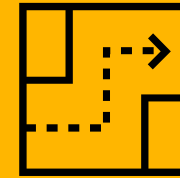
Key escalation to Board of potential failings



NED FTE considerations

Recording time and sharing relevant data

Board meeting prep time should count, but, on island?



The implications of the penalty regime

Not just financial

Strike off/ dissolutions

Automatic information exchange applied for Economic Substance failings

3.

Pillar II



Considerations for Pillar II



Why does it matter?

- €750m threshold based on consolidated turnover at UPE level.
- Impacts being in or out of scope for Pillar II.
- Also has an impact for CbCR.

What are we seeing?

- Starting point is to follow FS consolidation, but this doesn't always give the correct result - controlling holding is key.
- May need to consider higher up the structure, or those excluded from consolidation on grounds of materiality or being held for sale.
- Test is historic - 2 of 4 year rule applies to offer stability.

Next steps?

- Identify your consolidated groups.
- Seek advice if uncertain positions arise.
- Consider jurisdictions in groups and adoption date.

A Pillar II readiness and compliance plan is essential, and the time for action is **now**



Without action, you are at risk of being noncompliant in key jurisdictions, exposing the company to significant negative repercussions.



Any “last minute” fix will be highly expensive and disruptive. Getting ahead of this challenge is much more efficient and dramatically less costly.



Your current compliance process was likely not designed with Pillar II in mind – your people will need assistance adapting to new processes and requirements.



You will need to generate new data points from multiple sources as compared to what you need for compliance today — and assessing and remediating gaps is necessary before the first deadline.



Pillar II may have an impact on your effective tax rate and it will be important to understand the magnitude of that impact early to avoid surprises.

Key board considerations



Educate
teams

Consideration
of additional
compliance
burden

Identify
potentially
impacted
structures,
forecast
additional
costings

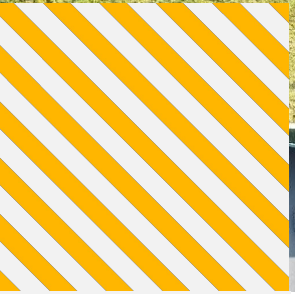
Tax
advice

Consider wider
jurisdictions in
structure: PwC
tool:

<https://www.pwc.com/gx/en/services/tax/pillar-two-readiness/country-tracker.html>

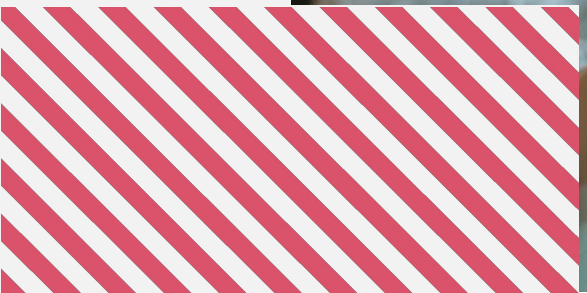
Consider
potential FS
impact following
anticipated UK
substantial
enactment in
summer 2023

Keep
up-to-date with
developments



4.

AEoI updates



FATCA/ CRS

Increasing scrutiny from other CRS participating jurisdictions and an uptick in Information Exchange requests.

CI amendments build stronger monitoring and enforcement capabilities for the Tax Office.

Guernsey, the Isle of Man and Caribbean territories have enhanced their legislation over the last two years to respond.

OECD next round of peer reviews underway with Jersey/ Guernsey each being reviewed, and putting Competent Authorities under some pressure to show improving data quality metrics - expect greater scrutiny.



Key aspects for Non-Executive Directors



The lack of audit trail at entity level

Increase in centralised AEOI reporting in administrators.

Often client entities have no separate policies/ procedures or reporting records.

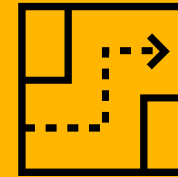
Lack of visibility by client entity/ boards surrounding the reporting undertaken.



Key Person Risk

Revenue Authorities expect key senior stakeholders of the business are involved in the reporting function.

Does your position provide you with qualification to undertake a supervisory function?



The implications of the revised penalty regime

Penalty regime change in Guernsey and forecast for Jersey.

To illustrate: combined account value of £10m with data errors would result in a 'negligence' (ie: the lower % charge) penalty of £50,000.

Hallmarks of effective implementation of FATCA and CRS

Key aspects:

- Clearly defined governance and oversight over FATCA and CRS compliance obligations at board and operational levels, including regular discussion at board level and reporting of key metrics.
- Where compliance is centralised or outsourced, appropriate oversight of administrators by Guernsey reporting entity.
- Formal documented policies and procedures for tax governance and FATCA and CRS.
- Adequate processes implemented to ensure completeness and accuracy of the FATCA and CRS reports, such as analytical reviews, reasonableness checks and exception testing.

Stakeholder
collaboration and
oversight

Training

Documentation and
record-keeping

Reporting systems,
data extraction and
report return
preparation

Due diligence

Key Guernsey legislative updates (and assessing direction of travel for Jersey)

Change to legislation

Mandatory Registration of FI (whether or not reporting)

NIL Reports required in cases of FI with no reportable accounts

Compliance Statements (or equivalent confirmation) to be submitted with filing

Governance and Controls (and Escalation) Framework; FI to maintain evidence they have all appropriate controls in operation

Self certification gap/ errors disclosure to GTO (31 March annually)

Enhanced powers of enquiry/ audit

Enhanced powers of direction by Tax Authority (including Account freezing; independent review or remediation)

Increased Penalty/ Sanction Regime - default minimums and % value basis

Considerations for Boards

Do you know the FATCA and CRS reporting requirements for the businesses you sit on?

Do you have any oversight over the policies, procedures and controls and have they been approved by the board?

Do you receive regular reports from any outsourcers?

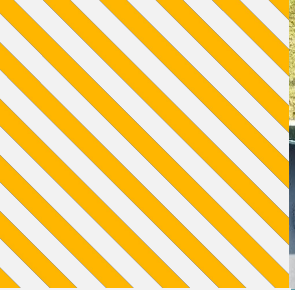
Are information exchange matters discussed at board meetings?

Have you considered the overlap between AEoI and the AML regulatory requirements for your businesses?



5.

Revenue service audits



Revenue audits

Compliance Interventions commenced at a company level in 2021:

- Initially targeting obvious failures and those with high turnover.
- Now seeing enquiries into significant changes with more years support
- Key driver on common issues - netted off income

Actively challenging board meetings. Consider:

- is the expertise appropriate?
- Was the time spent sufficient to cover the agenda items?
- Do the minutes adequately evidence discussions leading to the decisions.
- Documentation is key.

Administrator-level audits have now commenced:

- Some alignment to the AEoI regime, so may accompany an AEoI audit.
- Requesting P&Ps, training, resourcing, board engagement, sample test.



Recommendations for Boards

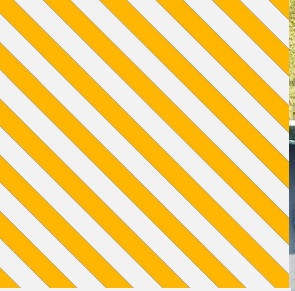
- Ensure substance is considered at least annually (minimum) and at key trigger points.
- Clarify escalation points and know when specialist advice is required - partnership law is significantly more complicated but with fewer partnerships falling in-scope.
- Who is reviewing the overall structure?
- Errors happen - deal with them transparently.
- If relying on an administrator, understand their Economic Substance compliance framework, consider adequacy of minutes.
- If in house, is there an appropriate Economic Substance policy in place?
- Documentation of minutes - evidence is key.





6.

Recommendations



Action plan



Identify
Knowledge
gaps

Ensure relevant
P&Ps are in place
and understood

Apply a
questioning
mind

Regular review
of
classifications
for both AEOI
and Economic
Substance

Good
governance
practice

Keep up-to-date
with
developments,
particularly
Assessing the
impact of PII
changes



Questions and discussion



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Focus, rigour, challenge

Thank you

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