

# STATES OF JERSEY

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## **DRAFT INCOME TAX (AMENDMENT No. 29) (JERSEY) LAW 200- (P.156/2007): AMENDMENTS**

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**Lodged au Greffe on 2nd November 2007  
by the Corporate Services Scrutiny Panel**

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**STATES GREFFE**

DRAFT INCOME TAX (AMENDMENT No. 29) (JERSEY) LAW 200 (P.156/2007): AMENDMENTS

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(1) PAGE 39, ARTICLE 33 –

*In paragraph (b) –*

(a) *in the inserted paragraph (6) –*

(i) *for the words “an unlisted financial services company” substitute the words “a Jersey financial services company”,*

(ii) *for the words “unlisted trading company” substitute the words “Jersey trading company”;*

(b) *in the inserted paragraph (7) –*

(i) *for the words “unlisted financial services company” substitute the words “Jersey financial services company”;*

(ii) *for the words “unlisted trading company” substitute the words “Jersey trading company”.*

(2) PAGES 42 – 43, ARTICLE 38 –

*In the inserted Article 81B(1) –*

(a) *delete the definition “unlisted financial services company” and insert, in its appropriate place in the alphabetical list of definitions, the following definition –*

“‘Jersey financial services company’ means a company to which Article 123D applies;”

(b) *delete the definition “unlisted trading company” and insert, in its appropriate place in the alphabetical list of definitions, the following definition –*

“‘Jersey trading company’ means a company to which Article 123C applies and which is not –

(a) a company subject to full attribution; or

(b) a collective investment fund;”.

(3) PAGE 44, ARTICLE 38 –

*In the inserted Article 81D(1) for the amount “5%” substitute the amount “2%”.*

(4) PAGE 46, ARTICLE 38 –

*In the inserted Article 81G(1) for the amount “5%” substitute the amount “2%”.*

(5) PAGES 42 – 53, ARTICLE 38 –

(a) *for the words “an unlisted financial services company”, in each place that they appear, substitute the words “a Jersey financial services company”;*

(b) *for the words “the unlisted financial services company”, in each place that they appear, substitute the words “the Jersey financial services company”;*

(c) *for the words “unlisted financial services companies”, in each place that they appear, substitute*

*the words “Jersey financial services companies”;*

*(d) for the words “unlisted trading company”, in each place that they appear, substitute the words “Jersey trading company”;*

*(e) for the words “unlisted trading companies”, in each place that they appear, substitute the words “Jersey trading companies”.*

(6) PAGE 55, ARTICLE 41 –

*In the inserted Article 85F(1) for the amount “5%” substitute the amount “2%”.*

CORPORATE SERVICES SCRUTINY PANEL

## REPORT

The Corporate Services Panel proposes amendments to the following Articles of the Draft Law.

### **Exemption from deemed distribution for quoted companies – Article 33(b); Article 38:**

1. Under Zero/Ten, most Jersey companies will not pay any tax. Instead, the tax is to be collected from the shareholders, through either deemed distribution or look-through (so that the shareholders are taxed on the dividend they *could* have received, rather than waiting until they *actually* receive one).
2. However, under the Draft Law, Article 38 provides that deemed distribution will not apply to companies that are quoted on a “recognised stock exchange”. This is not just the London Stock Exchange, but includes AIM, any EU Stock Exchange, any exchange in a list of other countries and “any other exchange approved in writing by the Minister” (Article 31). This includes several smaller exchanges, on which it could be relatively cheap and simple for a company to become listed. Jersey residents who own shares in those companies will not pay any tax until they actually receive a dividend – giving them an advantage over shareholders in unquoted companies.
3. We accept that it would be administratively impossible to apply the deemed distribution rule to a holding of a few shares in Shell and IBM. However:
  - deemed distribution only applies to Jersey companies; and
  - there is a 5% de minimis, so a shareholder who holds less than 5% of the company’s shares will not be subject to look-through anyway.
4. The Panel can see, and has heard, no reason why someone who owns more than 5% of a quoted company should not pay tax on its profits, when a shareholder in a small unquoted company will do so.
5. Secondly, there is a risk that some companies will seek to become listed on a smaller low-cost stock exchange specifically in order to avoid the deemed distribution tax and thereby be able to reinvest their profits tax-free, a tax break denied to normal Jersey companies.
6. **This exemption therefore seems to be unnecessary, and risks increasing avoidance further. We therefore propose an amendment to Article 38 (where it inserts the new Article 81B(1)(b)) and consequential amendments to Article 33 to remove the exemption from deemed distribution for quoted companies.**

### **De minimis limit – Article 38 (new Articles 81D(1) and 81G(1)) and Article 41 (new Article 85F(1)):**

7. Under Zero/Ten, most Jersey companies will not pay any tax. Instead the tax is to be collected from the shareholders, through either deemed distribution or look-through (so that the shareholders are taxed on the dividend they *could* have received, rather than waiting until they *actually* receive one).
8. However, under the Draft Law deemed distribution and look-through will not apply to shareholders who own 5% or less of the shares in the company. Although the Panel accepts the administrative need for a de minimis, it feels that 5% is too high for the following two reasons:
  - Firstly, 5% of a company can be a significant investment;
  - Secondly, it would be possible to avoid tax on a significant proportion of a company’s profits by splitting shareholdings between family members, each holding just 5% of the shares.

9. This de minimis would enable some significant shareholdings to avoid tax (until a dividend is actually paid), an ability denied to many owners of small companies.
10. **We therefore believe that 2% would be a better compromise between administrative efficiency and fairness, and propose an amendment for the de minimis limit to be lowered accordingly.**

**Financial/manpower implications**

There are no significant financial or manpower implications arising from these amendments.