

STATES OF JERSEY



DRAFT TAXATION (IMPLEMENTATION) (AMENDMENT) (JERSEY) LAW 201-

Lodged au Greffe on 22nd February 2013
by the Chief Minister

STATES GREFFE



Jersey

DRAFT TAXATION (IMPLEMENTATION) (AMENDMENT) (JERSEY) LAW 201-

European Convention on Human Rights

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

In the view of the Chief Minister the provisions of the Draft Taxation (Implementation) (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

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

Chief Minister

Dated: 21st February 2013

REPORT

The Taxation (Implementation) (Jersey) Law 2004 as enacted provided for the making of Regulations to give effect to tax agreements and obligations between the States of Jersey and another country or territory and a number of Regulations have been made.

In giving consideration to the drafting of Regulations which have recently been or are shortly to be presented to the States a gap has been identified in the provisions of the Principal Law. It is clear that in addition to agreements and obligations between the States of Jersey and another country or territory there is the possibility that, with the support of the States of Jersey, there could be agreements relating to taxation between the government of a country or territory outside Jersey and a Jersey person. This Law amendment will fill the gap identified and provide the flexibility required to cope with various requirements arising from international tax agreements.

Financial and manpower implications

There are no manpower or financial implications for the States of Jersey arising from this draft Law.

Human Rights

The notes 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

These notes on the human rights aspects of the draft Law in this 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.

The Draft Taxation (Implementation) (Amendment) (Jersey) Law 201- does not alter the nature of the information that can be subject to an approved agreement or an approved obligation under the 2004 Law. It does not alter the Law's requirement that for any documents or information to be required by Regulations under the 2004 Law to be passed to other territories, it will be necessary for those documents or information to relate to, or be in regard to, taxation. The Regulations do not alter the position that Regulations under Article 2 of the 2004 Law must comply with the Human Rights (Jersey) Law 2000, and would be unlawful and ineffective if they failed to comply.

Any legal obligation to provide documents will still directly by reason of Regulations passed by the States addressing the particular agreements and obligations, and would thus be "in accordance with law" for the purposes of Article 8.1 of the European Convention on Human Rights. The States approach as to whether to give any of the new type of agreements and obligations the force of law by way of Regulations will be no different to considering whether it is justified to pass any Regulations under the 2004 Law, or to approve any Tax Information Exchange Agreement with another territory.

As the amended Law makes only a change to how agreements and obligations can come before the States for recognition by way of Regulations, there is no change to analysis of the Human Rights (Jersey) Law 2000 that underpinned the approval of the 2004 Law. It is plainly proportionate to provide assistance to other countries and territories by helping them obtain documents and information relevant or regarding to taxation in their own jurisdiction.

Explanatory Note

This Law amends the Taxation (Implementation) (Jersey) Law 2004 (“Law”) so as to enable the States to make Regulations to give effect to –

- (a) agreements relating to taxation between the government of a country or territory outside Jersey and a Jersey person; or
- (b) obligations relating to taxation that are imposed on a Jersey person under, or in accordance with, the legislation of a country or territory outside Jersey.

Currently, the Law allows the States to make Regulations to give effect only to agreements and obligations between the States of Jersey and another country or territory.

Article 1 amends the definitions in the Law relating to “approved agreement” and “approved obligation” to have the effect explained above. “Jersey person” is defined to mean any person or body carrying on business in Jersey; who is resident in Jersey or whose constitution or business activity is governed by the law of Jersey. Such a person includes any person or body, whether incorporated or not.

Article 2 provides that the Law will come into force by an Appointed Day Act.



Jersey

DRAFT TAXATION (IMPLEMENTATION) (AMENDMENT) (JERSEY) LAW 201-

A LAW to amend the Taxation (Implementation) (Jersey) Law 2004.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Article 1 of the Taxation (Implementation) (Jersey) Law 2004 amended

For Article 1 of the Taxation (Implementation) (Jersey) Law 2004¹ there shall be substituted the following Article –

“1 Interpretation

In this Law –

‘approved agreement’ means an agreement regarding or relating to taxation which –

- (a) the States have authorized to be signed on their behalf with the government of another country or territory; or
- (b) is between a Jersey person and the government of a country or territory outside Jersey;

‘approved obligation’ means an obligation or requirement regarding or relating to taxation which –

- (a) the States have authorized to be signed or assented to on their behalf; or
- (b) is imposed under, or in accordance with, the legislation of a country or territory outside Jersey and applies to a Jersey person;

‘Jersey person’ means a person or body of persons, whether incorporated or not, to which any of the following applies –

- (a) the person or body carries on business in Jersey;

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- (b) the person or body is resident in Jersey;
 - (c) the person or body's constitution or business activity is governed by the law of Jersey;
- 'tax officer' means the Comptroller of Taxes or any officer appointed under Article 8 of the Income Tax (Jersey) Law 1961²;
- 'taxation' means any of the following –
- (a) taxation in Jersey;
 - (b) in relation to an approved agreement, taxation in the country or territory with whose government the agreement is made;
 - (c) in relation to an approved obligation, taxation in a country or territory to which the obligation is owed or taxation in the country or territory under, or in accordance with, whose legislation the obligation or requirement is imposed.”.

2 Citation and commencement

This Law may be cited as the Taxation (Implementation) (Amendment) (Jersey) Law 201- and shall come into force on such day as the States may by Act appoint.

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- ¹ *chapter 17.850*
² *chapter 24.750*