STATES OF JERSEY

DRAFT INCOME TAX (AMENDMENT No. 38) (JERSEY) LAW 201-

Lodged au Greffe on 17th May 2011
by the Minister for Treasury and Resources

STATES GREFFE

Jersey

DRAFT INCOME TAX (AMENDMENT No. 38) (JERSEY) LAW 201-

European Convention on Human Rights

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

In the view of the Minister for Treasury and Resources the provisions of the Draft Income Tax (Amendment No. 38) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

This draft Law gives effect to the repeal of the deemed distribution and full attribution taxation provisions, as announced by the Chief Minister on 15th February 2011.

Background

Jersey's business tax regime has recently been subject to assessment by the EU Code of Conduct on Business Taxation Group ("the Code Group"). Throughout the formal assessment process it was clear that the concerns of the Code Group focused on the interaction of the deemed distribution and attribution provisions with the 0% general rate of tax that applies to Jersey resident companies. This was further supported by the findings of the EU Council's High Level Working Party on Tax Matters review of the scope of the EU Code of Conduct on Business Taxation ("the Code") in January 2011.

To address these concerns the Minister for Treasury and Resources, supported by the Council of Ministers, is proposing to remove the deemed distribution and full attribution provisions with effect from 1st January 2012. There are good reasons why taking this action will result in Jersey's 0/10 tax regime being considered fully compliant with the Code.

Firstly, in 2003 ECOFIN determined that the 0/10 regime in advance of the presentation of the deemed distribution provisions, did not give rise to harmful effects.

Secondly, the rollback proposal of removing the deemed distribution and attribution provisions was discussed with HM Treasury officials on 31st March 2011. They were firmly of the view that the removal of these provisions would deal with the concerns raised by the Code Group and that the regime would then be considered to be compliant with the Code. This was on the basis that Jersey does not seek to introduce a replacement regime to replicate the effect of these provisions. As noted below, there is no intention to bring in a replacement regime.

The Code Group met on 11th April 2011. Although the UK made a clear statement about the proposed rollback, further clarity is being sought by the Member States of precisely what changes will be made. Lodging this draft Law will give an early clear message to the Code Group of Jersey's intentions.

The Code Group has been asked to give confirmation of their view of the rollback proposals at their next meeting on 25th May 2011. Although this is not the final decision, which under the process has to be made by ECOFIN, this will represent the recommendation they give to ECOFIN.

We have been advised that ECOFIN must formally complete the assessment of Jersey's present regime and if it is decided that the regime has harmful effects there will then be a formal request for rollback. The formal assessment should be completed by ECOFIN at its meeting on the 15th June 2011. ECOFIN will then consider the rollback proposals in the form of a report from the Code Group which would normally be expected to be tabled for the ECOFIN meeting in December 2011.

Approving this Law in advance of the final decision by ECOFIN will give confirmation that appropriate action has been taken by Jersey.

On the basis of the above, removal of deemed distribution and attribution provisions will ensure that Jersey can maintain its general rate of tax of 0% for companies, which is important for maintaining the island's competitive position and thereby the continued success of the Island's economy.

The proposed legislation

The relevant legislation will be repealed so that the current rules will only apply to profits subject to the deemed distribution and attribution provisions that arise on or before 31st December 2011. Transitional rules will be included which ensure there is no scope for avoiding the application of these rules for this period, for example through changing the accounting period end.

The legislation that is being retained

The general rate of 0% for companies, and the rates of 10% and 20% for certain defined companies, are being retained. This has not been challenged by the Code Group and therefore there is no reason to change this element of our tax legislation.

It is important that Jersey continues to demonstrate and maintain tax neutrality in a simple and transparent way. Our business tax regime provides this. Although tax neutrality can be achieved in other ways, it is also important that Jersey's tax regime is seen to be stable and provide certainty for the local and international businesses that operate here. Maintaining our general rate of tax of 0% sends a clear, strong signal that Jersey can continue to offer a competitive tax system which will safeguard the island's economic stability.

The shareholder loan provisions, which seek to tax individuals when they receive loans from companies in which they own shares, will also remain. This section of the legislation has not been questioned by the Code Group. It is not related to the deemed distribution and attribution provision and so it is not necessary to repeal this legislation.

No part of the existing deemed distribution rules or attribution rules will be retained.

Replacement of the repealed provisions

There is no intention to replace these provisions with another regime which replicates their effects. Jersey is able to tax Jersey resident individuals on dividends they receive and has a general anti-avoidance provision which will allow the Comptroller to challenge transactions for which the main purpose, or one of the main purposes, is the avoidance or reduction of a tax liability.

Financial and manpower implications

The Treasury forecasts suggest that the removal of these provisions would lead to a cash flow effect from 2013/2014 which in any one year is not expected to exceed £10 million.

There are no anticipated manpower demands expected to result from the repeal in legislation. Reviewing the impact of the change in law will be undertaken using existing manpower.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 11th May

2011 the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Treasury and Resources the provisions of the Draft Income Tax (Amendment No. 38) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This draft Law repeals the provisions of the Income Tax (Jersey) Law 1961 which impose a liability to tax on certain individuals who own shares in companies taxed at 0% or 10%, either by deeming the individual to have received taxable dividends ("deemed dividends") or by attributing the profits of the company to the individual, as if they were the individual's profits ("full attribution").

There will be no liability to tax on deemed dividends or full attribution of company profits accruing on or after 1st January 2012.

The draft Law is in 5 Parts of which Part 2 provides for the repeal of liability to tax by full attribution and Parts 3 and 4 provide for the repeal of liability to tax on deemed dividends.

Part 1 - Interpretation

Article 1 provides that references in this draft Law to Articles and other divisions of a Law are references to the Articles and other divisions of the Income Tax (Jersey) Law 1961 (the "principal Law").

Part 2 – Full attribution – repeal

Article 2 repeals the main Articles of the principal Law that impose the liability to tax by full attribution of company profits.

Article 3 makes miscellaneous amendments and repeals that are ancillary to the repeals in *Article 2*. These include removing the requirement to provide information in a tax return that is specific to taxation by full attribution (Article 16 of the principal Law), and removing the requirement for a company to provide computations of profits that would be required to calculate the profits attributed to a shareowner (Article 20B of the principal Law).

Article 10(3) of this draft Law provides for these repeals to commence on 1st January 2012. The repeals must, however, be read in conjunction with the provision added to Schedule 5 of the principal Law by *Article 4* of this draft Law.

Article 4 contains rules regarding the effect of the repeal of the liability to taxation by full attribution. Although the tax is repealed, liability remains for the years of assessment 2008 (but only for companies started in that year), 2009, 2010 and 2011. In addition, for the year of assessment 2011, the individual will be assessable to tax by full attribution of the company's income, profits and gains for the whole of the calendar year. The company, if it does not already have a financial period ending on 31st December 2011, will be taken to have such a financial period for this purpose.

It is also made clear that, although taxation by full attribution is repealed, the rule that an individual is not taxed twice on the same profits (for example, by full attribution of the profits followed by a dividend distribution of the profits) continues to apply.

Whilst the rule for repeal of taxation by full attribution and taxation by deemed dividends is the same – that profits accruing on or after 1st January 2012 are not taxed – the different nature of these 2 liabilities to tax means that a different approach is required for their respective repeals. *Parts 3 and 4* of this draft Law give effect to the 2 stages that are required to repeal taxation of deemed dividends.

Part 3 – Limitation of liability to taxation of deemed dividends

Article 5 inserts new Articles 81CA and 81CB in the principal Law. Articles 81CA and 81CB create closing rules for the taxation of deemed dividends.

Firstly, Article 81CA(1) provides that there is no liability to tax on deemed dividends in respect of profits accruing on or after 1st January 2012.

Secondly, Article 81CB(1) and (2) have the effect that a shareowner is liable to taxation of deemed dividends on the profits of a company accruing up to 31st December 2011. For that purpose, a company is taken to have a financial period ending on that day, if it does not in fact have a financial period ending on that day.

Finally, Article 81CA(2) and (3) and Article 81CB(3) provide a time limit on a shareowner's liability to taxation of deemed dividends on profits accruing to 31st December 2011 of, respectively, a Jersey trading company and a Jersey financial services company.

In the case of a Jersey trading company, a shareowner is taxed in 2 stages: an interim deemed dividend is deemed paid on the last day of the financial period following the financial period to which the dividend relates. A final deemed dividend is then only deemed to be paid if the shareowner dies, the company is wound up, the shares are sold or some other similar event occurs. The closing rules operate so that the shareowner will always be liable to assessment in 2012 on an interim deemed dividend due in respect of profits accruing to 31st December 2011, because a company, if does not in fact have a financial period ending in 2012, is deemed to have a financial period ending on 31st December 2012 (Article 81CB(3)). However a shareowner's liability to taxation on a final deemed dividend ends on 31st December 2011. Events occurring after that date that would otherwise trigger a deemed final dividend are disregarded, by virtue of Article 81CA(2).

In the case of a Jersey financial services company, a shareowner is taxed once, on a deemed dividend that is only deemed to be paid if the shareowner dies, the company is wound up, the shares are sold or some other similar event occurs. As for final deemed dividends, a shareowner's liability to taxation on a deemed dividend of a Jersey financial services company ends on 31st December 2011. Events occurring after that date that would otherwise trigger a deemed dividend payment are disregarded, by virtue of Article 81CA(3).

Article 6 amends Article 81E(4). That paragraph provides that, if a company is being wound up, the interim deemed dividend is only deemed to be paid when winding up is complete. As part of the arrangements for ensuring that 2012 is the final year of assessment for taxation of deemed dividends, this amendment has the effect that the deemed dividend is deemed to be paid by 31st December 2012 at the latest, even if the winding up of the company has not, at that time, been completed.

Part 4 – Deemed dividends – repeal

This Part repeals the provisions (as amended *by Part 3*) that impose the liability to tax on deemed dividends in respect of profits accruing to 31st December 2011. Because an individual's liability to pay tax on the final interim deemed dividend will not arise until the year of assessment 2012, *Article 10(2)* of this draft Law provides for the repeals to come into force on 1st January 2013.

Article 7 repeals the principal provisions imposing the liability to tax on deemed dividends.

Article 8 makes amendments and repeals that are ancillary to the repeals in *Article 7*. The amendments and repeals include removing the requirement to include information in a tax return about the profits by reference to which deemed dividends would be calculated (Article 16 of the principal Law) and the requirement for a company to provide computations of profits for the purposes of calculating deemed dividends (Article 20B of the principal Law).

Article 9 contains rules to preserve the continuing effect of taxation of deemed dividends for the collection of taxes due in respect of profits accruing before 1st January 2012. As with full attribution, there is specific provision to preserve the rule whereby a shareowner is not taxed twice on the same profits (for example, first as a deemed dividend and then on an actual dividend).

Part 5 – Closing

Article 10 provides for the citation and commencement of the draft Law. As noted, the Law comes into force on 1st January 2012, with the exception of the repeal of the liability to tax on deemed dividends, which comes into force on 1st January 2013.

Jersey

DRAFT INCOME TAX (AMENDMENT No. 38) (JERSEY) LAW 201-

Arrangement

Article

Jersey

DRAFT INCOME TAX (AMENDMENT No. 38) (JERSEY) LAW 201-

A LAW to amend further the Income Tax (Jersey) Law 1961

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 –

PART 1

INTERPRETATION

1 Interpretation

A reference in this Law to an Article or other sub-division of a Law by number only is a reference to the Article or other sub-division of that number in the Income Tax (Jersey) Law 1961[1].

PART 2

FULL ATTRIBUTION – REPEAL

2 Articles 85F to 85H repealed

Articles 85F to 85H and the cross heading preceding them are repealed.

3 Ancillary repeals and amendments – full attribution

(1) In Article 3(1) the definition "company subject to full attribution" is deleted.

(2) In Article 16 for paragraph (4A) there is substituted the following paragraph –

"(4A) A person required by a general or particular notice to deliver a statement and who is chargeable, for the period specified in the notice, under Case VIII of Schedule D on deemed dividends of a company shall furnish in support of the statement –

(a) the person's computation of the relevant profits of the company, as defined in Article 81B, and the person's income chargeable under Case VIII in respect of the company; and

(b) a copy of the company's accounts for each financial period by reference to which the computation is made.".

(3) In Article 20B –

(a) in paragraph (3) sub-paragraph (g) is deleted;

(b) in paragraph (5) for the words "to (g)" there are substituted the words "to (f)";

(c) in paragraph (6) for the words "Article 81K, 81L or 85G," there are substituted the words "Article 81K or 81L,".

(4) In Article 81O(1)(a) the words "and which is not a company subject to full attribution" are deleted.

(5) In Article 82(1) for the words "and to Articles 82B and 85F" there are substituted the words "and to Article 82B".

(6) In Article 82B(1) sub-paragraph (b), and the word "or" following sub-paragraph (a), are deleted.

(7) In Article 133 –

(a) in paragraph (4) the words "Subject to paragraph (4A)," are deleted;

(b) paragraph (4A) is deleted.

4 Schedule 5 amended

After paragraph 6 of Schedule 5 the following paragraphs are added –

"7 Income Tax (Amendment No. 38) (Jersey) Law 201-: saving for liability to taxation by full attribution

(1) Notwithstanding their repeal by Article 2 of the Income Tax (Amendment No. 38) (Jersey) Law 201-, Articles 85F to 85G shall continue to have effect for the years of assessment 2008 (in accordance with paragraph 6 of this Schedule), 2009, 2010 and, subject to sub-paragraphs (3) to (5), 2011.

(2) The provisions of this Law amended by Article 3 of the Income Tax (Amendment No. 38) (Jersey) Law 201- shall continue to have

effect, as they were in force immediately before the commencement of Part 2 of that Law, for the purposes of the continuing operation of Articles 85F to 85G.

(3) Sub-paragraphs (4) and (5) apply in the case of a company subject to full attribution which does not have a financial period ending on 31st December 2011.

(4) Article 85F shall apply –

(a) in the case of a company that, on 31st December 2011, has not completed its first financial period, as if the period beginning on the day the company is incorporated and ending on 31st December 2011 were the first financial period of the company;

(b) in the case of any other company that does not have a financial period ending on 31st December 2011, as if the period –

(i) beginning on the day following the end of the last financial period of the company preceding 31st December 2011, and

(ii) ending on 31st December 2011,

were a financial period of the company.

(5) Article 85C(1) (as applied by Article 85F(6)) shall apply as if the operation of the rule in sub-paragraph (4)(b) were a change in the financial period for the company.

(6) In this paragraph 'first financial period', in relation to a company, means the financial period beginning on the day the company is incorporated.

8 Income Tax (Amendment No. 38) (Jersey) Law 201-: entitlement to credit for tax paid on full attribution

(1) An individual who has paid tax on his or her portion of a company's relevant profits for a financial period, pursuant to Article 85F, shall be entitled to a credit, not exceeding the amount of tax paid, against his or her liability to pay tax on any dividend that –

(a) is paid or issued out of the relevant profits in respect of a share comprised in the ordinary share capital of the company; and

(b) is not deducted by virtue of Article 85F(12A), in determining that portion.

(2) Expressions used in sub-paragraph (1) have the same meaning as in Article 85F, as it continues to have effect by virtue of paragraph 7(1).".

PART 3

LIMITATION OF LIABILITY TO TAXATION OF DEEMED DIVIDENDS

5 Articles 81CA and 81CB inserted

After Article 81C the following Articles are inserted –

“81CA Limitation of liability to taxation of deemed dividends from 2012

(1) Notwithstanding Article 81C(a), an individual shall not be liable to taxation under Articles 81D, 81E and 81F or under Article 81G in respect of relevant profits accruing to a company on or after 1st January 2012.

(2) Notwithstanding Articles 81C(a), 81D(3)(b) and 81F, a final deemed dividend shall not be deemed to have been paid by reason of the occurrence of an event described in any of sub-paragraphs (a) to (e) of Article 81F, if the event occurs on or after 1st January 2012.

(3) Notwithstanding Articles 81C(a) and 81G, an individual shall not be deemed to have received a dividend out of the relevant profits of a Jersey financial services company by reason of the occurrence of an event described in any of sub-paragraphs (a) to (e) of paragraph (3) of that Article, if the event occurs on or after 1st January 2012.

81CB Modification of liability to taxation of deemed dividends on profits arising in 2011

(1) Paragraph (2) applies in the case of a company –

(a) in respect of which an individual may be liable to taxation under Articles 81D, 81E and 81F or under Article 81G; and

(b) which does not have a financial period ending on 31st December 2011.

(2) Articles 81D, 81E, 81F and 81G shall apply –

(a) in the case of a company that, on 31st December 2011, has not completed its first financial period, as if the period beginning on the day the company is incorporated and ending on the 31st December 2011 were the first financial period of the company;

(b) in the case of any other company that does not have a financial period ending on 31st December 2011, as if the period –

(i) beginning on the day following the end of the last financial period of the company preceding 31st December 2011, and

(ii) ending on 31st December 2011,

were a financial period of the company.

(3) Where –

(a) an individual is deemed to receive an interim deemed dividend out of the relevant profits of a company for the company's actual or deemed financial period ending on 31st December 2011; and

(b) apart from this paragraph, the last day of the following financial period of the company would fall after 31st December 2012,

Article 81E shall apply as if the last day of the following financial period of the company were the 31st December 2012.

(4) In this Article 'first financial period', in relation to a company, means the financial period beginning on the day the company is incorporated.".

6 Article 81E amended

In Article 81E, for paragraph (4) there shall be substituted the following paragraph –

"(4) Where the winding up of a company commences before the day that the interim dividend would be deemed to be received by an individual by virtue of paragraph (1), the interim dividend shall instead be deemed to be received by the individual on 31st December 2012 or, if earlier, the completion of the winding up of the company.".

PART 4

DEEMED DIVIDENDS – REPEAL

7 Articles 81B, 81CA, 81CB and 81D to 81N repealed

Articles 81B, 81CA, 81CB and 81D to 81N are repealed.

8 Ancillary repeals and amendments - deemed dividends

(1) In Article 3(1) the definition "deemed dividend" is deleted.

(2) In Article 16 –

(a) paragraph (4A) is deleted;

(b) for paragraph (5) there is substituted the following paragraph –

"(5) In this Article a reference to ownership, acquisition or disposal of a source shall, in the case of an individual, where the source is shares, be construed in accordance with Articles 82A and 82AA.";

(c) paragraphs (6) and (7) are deleted.

(3) In Article 20B –

(a) in paragraph (3), sub-paragraph (f) is deleted;

(b) paragraphs (5), (6) and (7) are deleted;

(c) in paragraph (8) the definition "relevant profits" is deleted.

(4) In Article 61(1) –

(a) the word "and" is added after sub-paragraph (c);

(b) sub-paragraph (d) is deleted.

(5) In Article 62(1) sub-paragraph (a) of Case VIII is deleted.

(6) Article 81C(a) is deleted.

(7) In Article 82(1) the words "and to Article 82B" are deleted.

(8) Article 82B is repealed.

9 Schedule 5 amended

After paragraph 8 of Schedule 5 the following paragraphs are added –

"9 Income Tax (Amendment No. 38) (Jersey) Law 201-: liability to taxation of deemed dividends

(1) Notwithstanding their repeal by Article 7 of the Income Tax (Amendment No. 38) (Jersey) Law 201-, Articles 81B, 81CA, 81CB and 81D to 81M shall continue to have effect for the years of assessment 2008 (in accordance with paragraph 6 of this Schedule) and 2009 to 2012.

(2) The provisions of this Law amended by Article 8 of the Income Tax (Amendment No. 38) (Jersey) Law 201- shall continue to have effect, as they were in force immediately before the commencement of Part 4 of that Law, for the purposes of the continuing operation of the Articles referred to in sub-paragraph (1).

10 Income Tax (Amendment No. 38) (Jersey) Law 201-: entitlement to credit for tax paid on deemed dividends

(1) This paragraph applies where –

(a) pursuant to Article 81D or 81G, a dividend is deemed to be received by an individual out of the relevant profits of a company for a relevant financial period; and

(b) a dividend that is not a relevant dividend is paid or issued out of those profits, in respect of a share comprised in the ordinary share capital of the company.

(2) Where this paragraph applies, an individual who has paid tax on a deemed dividend described in sub-paragraph (1)(a) shall be entitled to a credit, in an amount equal to the amount of tax paid, against his or her liability to tax on any dividend described in sub-paragraph (1)(b).

(3) Expressions used in this paragraph shall be construed in accordance with the Articles referred to in paragraph 9(1), as they continue to have effect by virtue of paragraph 9(1).".

PART 5

CLOSING

10 Citation and commencement

(1) This Law may be cited as the Income Tax (Amendment No. 38) (Jersey) Law 201-.

(2) Part 4 of this Law comes into force on 1st January 2013.

(3) The remainder of this Law comes into force on 1st January 2012.

[1] *chapter 24.750*