

STATES OF JERSEY



DRAFT DOUBLE TAXATION RELIEF (ARRANGEMENT WITH THE UNITED KINGDOM) (JERSEY) ACT 201-

**Lodged au Greffe on 23rd May 2016
by the Minister for External Relations**

STATES GREFFE



Jersey

DRAFT DOUBLE TAXATION RELIEF (ARRANGEMENT WITH THE UNITED KINGDOM) (JERSEY) ACT 201-

REPORT

The UK Budget on 16th March 2016 included a tax measure whereby non-resident owned companies engaged in development in the UK would be subject to the same tax on development gains as a UK resident owned company. That tax measure could be avoided through the use of a Jersey company because of the terms of the 1952 Arrangement between Her Majesty's Government and the Government of Jersey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The Government of Jersey was therefore asked by Her Majesty's Government if it would agree to an amendment to the 1952 Arrangement to bring the position of a Jersey company into line with that of other non-resident owned companies.

With the agreement of the Government of Jersey, the 1952 Arrangement is being amended. This amendment incorporates into the existing Arrangement wording that is in the OECD Model Double Taxation Agreement (DTA) and which would be expected to be included in a modern DTA between Jersey and the United Kingdom on which negotiations are currently underway. It is also consistent with the OECD principles in the Base Erosion and Profit Shifting (BEPS) Action Plan, to which Jersey has indicated it is generally committed.

The amendment has been agreed between the Government of Jersey and Her Majesty's Government through an exchange of letters which are attached as an **Appendix** to this Report. The amendment will enter into force when it has been ratified by both parties, and when in force it will have application to transactions on and after 16th March 2016. A press release announcing the amendment and the exchange of letters was issued on that date. The legislation to put the UK Budget measure into effect will be inserted into the UK Finance Bill at Report Stage by way of a government amendment. It is proposed that the States debate on the amendment to the 1952 Arrangement will take place after the UK legislation has been enacted, when it will be certain that the Budget measure is in place.

As stated above, the terms of the amendment are in line with the terms of modern DTAs, and are in common with the terms of those DTAs that Jersey has negotiated with other countries in recent years. However, without explanation, the amendment might be thought to have wider application than that required by the UK Budget measure. To clarify the position, the amendment language cannot create a taxing right that does not exist in UK law. The amendment simply deals with the position whereby with the existing Arrangement, a company resident in Jersey could potentially carry

on a business of developing UK land, but the profits could be treated as arising wholly in Jersey if the business avoids creating a permanent presence in the UK.

The Budget measure is concerned with the taxing of trading or development profits arising from the disposal of UK land owned by non-residents. UK property acquired by an ordinary non-resident as an investment, and disposed of, will not be subject to the new charge, and no part of any resulting gain will be taxable in the UK unless it is within the existing rules taxing capital gains made by non-residents on disposals of UK residential property. The term “immovable property” is taken from the OECD Model DTA and is included solely to preserve consistency with that Model. It does not extend the scope of the amendment beyond that required to address the UK Government’s concerns regarding the possible non-application of the Budget measure to a Jersey company engaged in development in the UK.

Financial and manpower implications

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

APPENDIX TO REPORT



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Senator Ian Gorst
Chief Minister's Department
PO Box 140
Cyril le Marquand House The Parade
ST HELIER Jersey
JE4 8QT

29 February 2016

Dear Senator

I have the honour to propose to you the Arrangement, further amending the 1952 Arrangement between Her Majesty's Government and the Government of Jersey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income at Appendix 1 to this letter and that this Arrangement shall have effect in accordance with paragraph 4 thereof.

I have the further honour to propose that, if the above is acceptable to the Government of Jersey, this letter and Appendix 1 together with your reply will constitute our mutual acceptance of the provisions of the Arrangement.

Yours sincerely
David Gauke

David Gauke MP



APPENDIX 1

ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF JERSEY AMENDING THE 1952 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE 1994, 2009 AND 2015 ARRANGEMENTS BETWEEN THE TWO GOVERNMENTS

Her Majesty's Government and the Government of Jersey,

Desiring to strengthen their economic relationship and to improve the operation of the existing arrangement between the two governments for the avoidance of double taxation and the prevention of fiscal evasion, have agreed as follows:

1. In this Arrangement the term "1952 Arrangement" means that Arrangement as amended by the 1994, 2009 and 2015 Arrangements.

2. To insert after subparagraph (4) of paragraph 3 of the 1952 Arrangement the following new subparagraph:

"(5) Where profits include items of income or capital gains which are dealt with separately in other paragraphs of this Arrangement, then the provisions of those paragraphs shall not be affected by the provisions of this paragraph."

3. To insert after paragraph 3 of the 1952 Arrangement the following new paragraphs:

"3A. (1) Income derived by a resident of one of the territories from immovable property (including income from agriculture or forestry) situated in the other territory may be taxed in that other territory.

(2) The term "immovable property" shall have the meaning which it has under the law of the territory in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of subparagraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of subparagraphs (1) and (3) shall also apply to the income from immovable property of a United Kingdom enterprise and a Jersey enterprise."

"3B. (1) Gains derived by a resident of one of the territories from the alienation of immovable property referred to in paragraph 3A and situated in the other territory may be taxed in that other territory.

(2) Gains derived by a resident of one of the territories from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or



comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other territory may be taxed in that other territory.”

4. Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of this Arrangement. This Arrangement shall enter into force on the date of the later of these notifications and shall thereupon have effect from 16 March 2016.

Minister for External Relations
Ministry of External Relations
Cyril Le Marquand House
St Helier,
Jersey, JE4 8QT



Mr David Gauke MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

8 March 2016

Dear Financial Secretary,

I have the honour to acknowledge receipt of your letter of the 29 February 2016 addressed to the Chief Minister proposing the Arrangement, further amending the 1952 Arrangement between Her Majesty's Government and the Government of Jersey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, at Appendix 1 to your letter and that this Arrangement shall have effect in accordance with paragraph 4 thereof.

I have the further honour to confirm that the above is acceptable to the Government of Jersey and that this letter together with your letter and Appendix 1 constitute our mutual acceptance of the provisions of the Arrangement.

Yours sincerely,

Philip Bailhache

Senator Sir Philip Bailhache
Minister for External Relations

Telephone: +44 (0) 1534 440635 Email: p.bailhache@gov.je www.gov.je/externalrelations

Explanatory Note

This Act would give effect to an arrangement (“amending arrangement”) between her Majesty’s Government (“HMG”) and the Government of Jersey (“Jersey”) (a copy of which is contained in the *Schedule*), which would further amend the “1952 Arrangement” (defined in *Article 1*). The amending arrangement was agreed by an exchange of letters between the 2 Governments respectively dated 29th February 2016 and 8th March 2016. The 1952 Arrangement has previously been amended by arrangements entered into between HMG and Jersey in 1994, 2009 and 2015.

Article 2 declares that the amending arrangement, contained in the *Schedule*, is to have effect so as to amend the 1952 Arrangement as set out in the *Schedule* to the Double Taxation Relief (Arrangement with the United Kingdom) (Jersey) Act 1952.

Article 3 sets out the title of this Act. The Act would come into force as soon as it is approved by the States. The amending arrangement given effect by this Act would, under paragraph 4 of that arrangement (see the *Schedule*), only come into force once both Governments have notified each other of the completion of the procedures required by law to bring the amending arrangement into force whereupon, it would enter into force on the date of the later of these notifications. Thereafter, the effect of the amendments to the 1952 Arrangement would apply from 16th March 2016.

The *Schedule* contains a copy of the amending arrangement.

Paragraph 1 of the amending arrangement defines the expression “1952 Arrangement”.

Paragraph 2 of the amending arrangement adds a new sub-paragraph (5) to paragraph 3 of the 1952 Arrangement, the purpose of which is to clarify that the provisions of paragraph 3 have no overriding application in respect of any other paragraphs of the 1952 Arrangement which deal with the taxation of profits which include items of income or capital gains.

Paragraph 3 of the amending arrangement inserts new paragraphs 3A and 3B into the 1952 Arrangement.

Paragraph 3A provides that income derived by a person resident (for tax purposes) of either the UK or Jersey (“territory”), from “immovable property” (as defined in paragraph 3A(2)) situated in the territory in which the person is not resident (“non-resident”), may be taxed by that territory. Income generated by the direct use or letting of immovable property, including immovable property owned by non-resident commercial enterprises, may be taxed by the territory in which the income is derived.

Paragraph 3B provides that gains derived by a UK or Jersey resident from the transfer of shares deriving more than 50 per cent of their value, whether directly or indirectly, from immovable property situated in the territory in which the person is non-resident, may be taxed by that territory.



Jersey

**DRAFT DOUBLE TAXATION RELIEF
(ARRANGEMENT WITH THE UNITED KINGDOM)
(JERSEY) ACT 201-**

Arrangement

Article

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Jersey

DRAFT DOUBLE TAXATION RELIEF (ARRANGEMENT WITH THE UNITED KINGDOM) (JERSEY) ACT 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 111 of the Income Tax (Jersey) Law 1961¹, have made the following Act –

1 Interpretation

In this Act “1952 Arrangement” means the Arrangement first entered into in 1952 between His Majesty King George V’s Government and the States of Jersey, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and set out, as amended, in the Schedule to the Double Taxation Relief (Arrangement with the United Kingdom) (Jersey) Act 1952².

2 1952 Arrangement amended

It is declared that –

- (a) further to an exchange of letters between Her Majesty’s Government and the Government of Jersey respectively dated 29th February 2016 and 8th March 2016, the arrangement, as appended to the letter from Her Majesty’s Government, a copy of which is set out in the Schedule, is acceptable to both Governments; and
- (b) it is expedient that that arrangement shall, in accordance with its provisions, have effect so as to amend the 1952 Arrangement as set out in the Schedule to the Double Taxation Relief (Arrangement with the United Kingdom) (Jersey) Act 1952.

3 Citation and commencement

- (1) This Act may be cited as the Double Taxation Relief (Arrangement with the United Kingdom) (Jersey) Act 201-.

- (2) The arrangement in the Schedule shall come into force in accordance with its terms.

SCHEDULE

(Article 2)



APPENDIX 1

ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF JERSEY AMENDING THE 1952 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE 1994, 2009 AND 2015 ARRANGEMENTS BETWEEN THE TWO GOVERNMENTS

Her Majesty's Government and the Government of Jersey,

Desiring to strengthen their economic relationship and to improve the operation of the existing arrangement between the two governments for the avoidance of double taxation and the prevention of fiscal evasion, have agreed as follows:

1. In this Arrangement the term "1952 Arrangement" means that Arrangement as amended by the 1994, 2009 and 2015 Arrangements.
2. To insert after subparagraph (4) of paragraph 3 of the 1952 Arrangement the following new subparagraph:

"(5) Where profits include items of income or capital gains which are dealt with separately in other paragraphs of this Arrangement, then the provisions of those paragraphs shall not be affected by the provisions of this paragraph."

3. To insert after paragraph 3 of the 1952 Arrangement the following new paragraphs:

"3A. (1) Income derived by a resident of one of the territories from immovable property (including income from agriculture or forestry) situated in the other territory may be taxed in that other territory.

(2) The term "immovable property" shall have the meaning which it has under the law of the territory in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of subparagraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of subparagraphs (1) and (3) shall also apply to the income from immovable property of a United Kingdom enterprise and a Jersey enterprise."

"3B. (1) Gains derived by a resident of one of the territories from the alienation of immovable property referred to in paragraph 3A and situated in the other territory may be taxed in that other territory.

(2) Gains derived by a resident of one of the territories from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other territory may be taxed in that other territory."

4. Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of this Arrangement. This Arrangement shall enter into force on the date of the later of these notifications and shall thereupon have effect from 16 March 2016.

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- ¹ *chapter 24.750*
² *chapter 24.750.10*