

# STATES OF JERSEY



## DRAFT INCOME TAX (AMENDMENT No. 42) (JERSEY) LAW 201-

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Lodged au Greffe on 4th December 2012  
by the Minister for Treasury and Resources

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STATES GREFFE





Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 42) (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. 42) (Jersey) Law 201- are compatible with the Convention Rights.

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

## REPORT

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The Draft Income Tax (Amendment No. 42) (Jersey) Law 201- proposes to amend the Jersey tax treatment of limited liability partnerships (LLPs). Currently, LLPs are treated in the same way as general partnerships for the purposes of the Income Tax Law. As a result, tax assessments are raised on the partnership itself and not on the partners.

A review has been undertaken by the Economic Development Department into ways in which to make the Jersey limited liability partnership (LLP) more attractive to international investors. As part of that review, it has been identified that the Jersey tax treatment of LLPs is not in line with standard international practice, and that this could be a deterrent to those seeking to make use of the structure.

It is proposed to bring the treatment of LLPs in line with the other types of partnerships in Jersey, namely limited partnerships, separate limited partnerships and independent limited partnerships. As a result of this change, tax will be assessed on the partners of an LLP on their share of the LLP's income and gains, and no assessment will be raised on the LLP itself.

### **Financial and manpower implications**

No additional manpower requirements will arise from the implementation of Amendment No. 42. There are no financial implications as no Jersey LLPs have been formed to date.

### **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 3rd December 2012, 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. 42) (Jersey) Law 201- are compatible with the Convention Rights.

## Explanatory Note

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This Law amends the Income Tax (Jersey) Law 1961 (the “principal Law”) so as to revise the way in which the profits or gains of a limited liability partnership are taxed.

*Article 1* inserts Article 76D in the principal Law. The principal effect of Article 76D is to provide that the partners in a limited liability partnership are taxed on its profits and gains in the same way as the partners of limited partnerships, incorporated limited partnerships and separate limited partnerships. In the absence of Article 76D, the limited liability partnership itself, as a separate legal entity, would be taxed on the profits and gains of the partnership. The effect is achieved by Article 76D(1) to (3).

Article 76D(4) provides that profits and gains arising from the international activities of a non-resident partner are not subject to income tax.

Article 76D(5) disapplies Articles 74 and 76 of the principal Law.

Article 74 provides, generally, for the precedent partner in a partnership to make a statement of the partnership’s profits and gains. In the case of a limited liability partnership, that obligation will fall upon the designated partner in the event that any of the partners is liable to income tax on his or her share of the profits and gains of the partnership. The obligation is imposed by Article 76D(7).

Article 76 provides for a partnership controlled and managed abroad to be deemed to be resident outside Jersey and carried on by persons resident outside Jersey, even if some of the partnership business is carried on in Jersey or some of the partners are resident in Jersey. The rule does not extend to the profits or gains of the partnership arising from a trading operation in Jersey.

Article 76D(6) disapplies Articles 86 and 87 of the principal Law where an annuity, an interest payment or a similar payment is paid by a limited liability partnership. Articles 86 and 87 require the person paying making the payment to deduct tax before doing so and, if the payment is not made out of profits and gains that have been taxed already, to account to the Comptroller for the tax.

The effect of Article 76D(7) is noted above, in relation to the disapplication of Article 74 of the principal Law.

*Article 2* provides for the citation of this Law. The States will be requested to adopt an act of declaration, under Article 15 of the Public Finances (Jersey) Law 2005, giving this Law immediate effect. This Law would then come into force on the day it is adopted.





Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 42) (JERSEY) LAW 201-**

### **Arrangement**

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#### **Article**

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Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 42) (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 –

### **1 Income Tax (Jersey) Law 1961 amended**

After Article 76C of the Income Tax (Jersey) Law 1961<sup>1</sup> there shall be inserted the following Article –

#### **“76D Limited liability partnerships**

- (1) For the purposes of this Law, a trade, profession, business or vocation carried on by a limited liability partnership with a view to profit or gain shall be treated as carried on in partnership by its partners, and not by the limited liability partnership as such.
- (2) Accordingly, the property of the limited liability partnership shall be treated for those purposes as partnership property of the partners, and not as property of the limited liability partnership.
- (3) Subject to the provisions of this Article, the provisions of this Law apply to the profits or gains of a partner in a limited liability partnership.
- (4) Paragraph (3) shall not apply to the profits or gains derived from international activities of a partner in a limited liability partnership who is not resident in Jersey.
- (5) Articles 74 and 76 shall not apply to a partner in a limited liability partnership.
- (6) Articles 86 and 87 shall not apply where a payment referred to in those Articles is made by or through a limited liability partnership.

- (7) Where a partner in a limited liability partnership is –
- (a) resident in Jersey; or
  - (b) non-resident in Jersey and entitled to profits or gains not excluded from charge by paragraph (4),

the designated partner or, if there is more than one designated partner, the designated partner who is first identified as such in the declaration shall, when required to do so by any general notice or by notice served on the designated partner by the Comptroller, prepare and deliver a statement of those profits or gains arising to the said partners from the activities of the limited liability partnership.

- (8) In this Article –
- ‘declaration’, ‘designated partner’, ‘limited liability partnership’, and ‘partner’ have the same meanings as they have in the Limited Liability Partnerships (Jersey) Law 1997<sup>2</sup>;
- ‘profits or gains’ does not include profits or gains of a capital nature.”.

## 2 Citation

This Law may be cited as the Income Tax (Amendment No. 42) (Jersey) Law 201-.

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- <sup>1</sup> *chapter 24.750*  
<sup>2</sup> *chapter 13.475*