

STATES OF JERSEY



Jersey

DRAFT INCOME TAX (AMENDMENT OF LAW – LIMITED LIABILITY COMPANIES) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 15th February 2022
by the Minister for Treasury and Resources
Earliest date for debate: 29th March 2022**

STATES GREFFE

REPORT

These Regulations, to be made under the powers in Article 143 [Income Tax \(Jersey\) Law 1961](#), allow for the tax treatment of a new type of entity the Jersey LLC (Limited Liability Company), and its members.

Jersey LLCs are vehicles under the [Limited Liabilities Company \(Jersey\) Law 2018](#), which although it has received Royal Assent, is not yet effective.

The new vehicle has been developed by the financial services team in Government with input from industry. An important part of that was to establish the preferred Jersey tax treatment of these new entities.

The Regulations are designed so that the LLC itself will not itself be subject to income tax on its profits, rather the treatment will be to look through the LLC to its members as if the assets of the LLC, and the income arising to the LLC, was directly theirs. This is similar to the basic approach for partnerships in Jersey's tax law.

In addition;

- The secretary of the LLC will have responsibilities to provide information via a return.
- The presence of an establishment of the LLC will be treated as an establishment of its members.
- Where an LLC engages in activities which generate income which would have been taxed at 10% if it was a company, any company members of the LLC will be similarly charged.

When passed the Regulations will form part of a wider package of amendments to Laws in Jersey to accommodate this new entity.

It is intended these Regulations are lodged at the same time or shortly after those other legislative changes forming this package.

The current intention is that the Jersey LLC is capable of being used by our Financial Services industry by late Spring 2022.

Financial and manpower implications

The current assessment by Revenue Jersey is that there will be no resources required, beyond some changes to returns which can be carried out within other projects.

EXPLANATORY NOTE

The draft Income Tax (Amendment of Law – Limited Liability Companies) (Jersey) Regulations 202-, if adopted, will amend the Income Tax (Jersey) Law 1961 (the “Income Tax Law”) to provide for the tax treatment of limited liability companies (“LLCs”).

Article 1 provides that these Regulations amend the Income Tax Law.

Article 2 adds definitions of LLC and member (in relation to an LLC) to Article 3 of the Income Tax Law.

Article 3 amends Article 3A of the Income Tax Law to provide that a person who is a member of an LLC is connected with another member of the LLC and with the other member’s relatives and spouse or civil partner.

Article 4 amends Article 17A of the Income Tax Law to provide that LLCs are liable to the same penalties as body corporates for late delivery of returns.

Article 5 amends Article 21 of the Income Tax Law to apply the requirements of that Article (which provides for the form and manner of returns) to returns required to be provided by an LLC.

Article 6 amends Article 21B of the Income Tax Law to make it an offence for a person to fail to comply with new Article 135C (inserted by Article 8 and discussed below).

Article 7 amends Article 123D of the Income Tax Law to ensure that a member of an LLC that is a company is captured by the definition of financial services company in that Article if the LLC would, if it were a company, fall within that definition.

Article 8 inserts new Part 21B into the Income Tax Law. New Part 21B makes special provisions for the taxation of LLCs and consists of new Articles 135C to 135F.

New Article 135C allows the Comptroller to require the secretary of an LLC to provide returns to the Comptroller containing the LLC’s financial statements and the details of each member of the LLC.

New Article 135D provides that the income and property of an LLC is treated, for the purposes of the Income Tax Law, as being the income and property of the LLC’s members.

New Article 135E determines whether an LLC and its members are resident in Jersey for tax purposes.

New Article 135F provides that new Part 21B does not affect either the separate legal personality of an LLC or the duties of an LLC under the Income Tax Law as an employer or building contractor.

Article 9 states the title by which these Regulations may be cited and provides that these Regulations come into force at the same time as Article 60 of the Limited Liability Companies (Jersey) Law 2018 (that Article will come into force on a day appointed by an appointed day Act made under Article 63 of that Law).



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

THE STATES make these Regulations under Articles 143 and 143A of the [Income Tax \(Jersey\) Law 1961](#) –

1 [Income Tax \(Jersey\) Law 1961](#) amended

These Regulations amend the [Income Tax \(Jersey\) Law 1961](#).

2 Article 3 (general provisions as to interpretation) amended

- (1) In Article 3, after the definition “lifetime annuity” there is inserted –
“ “LLC” or “limited liability company” means a limited liability company registered under Article 4 of the Limited Liability Companies (Jersey) Law 2018;”.
- (2) In Article 3, after the definition “medical practitioner” there is inserted –
“ “member”, in relation to a limited liability company, has the meaning given in Article 1(1) of the Limited Liability Companies (Jersey) Law 2018;”.

3 Article 3A (connected persons) amended

After Article 3A(3) there is inserted –

- “(3A) A person who is a member of an LLC is connected with a person who is –
- (a) another member of the LLC; or
 - (b) the spouse, civil partner or a relative of another member of the LLC.”.

4 Article 17A (penalty for late delivery of return) amended

- (1) In Article 17A(2)(a), –
 - (a) after clause (i) there is inserted –

- “(ia) in the case of a return in respect of an LLC under Article 135C, midnight on 31st December in the year following the year of assessment,”;
 - (b) in clause (ii), for “clause (i)” there is substituted “clause (i) or (ia)”;
 - (c) in clause (iii), for “clause (i) or (ii)” there is substituted “clause (i), (ia) or (ii)”.
- (2) In Article 17(2B)(b) and (12A), for “20C or 20D” there is substituted “20C, 20D or 135C”.
- (3) In each of the following places, for “body corporate” there is substituted “body corporate or LLC” –
 - (a) Article 17A(2B)(a);
 - (b) Article 17A(2B)(b);
 - (c) Article 17A(3)(a);
 - (d) Article 17A(4);
 - (e) Article 17A(4A)(a).

5 Article 21 (form and manner of returns) amended

In Article 21(1), definition of “return”, after sub-paragraph (i) there is inserted –

“(ia) a return under Article 135C;”.

6 Article 21B (offences) amended

After Article 21B(1)(j) there is inserted –

“(a) Article 135C (secretary of LLC to provide returns).”.

7 Article 123D (financial services companies) amended

After Article 123D(4) there is inserted –

“(4A) If an LLC would, if it were a company, satisfy any of the criteria in paragraph (4) –

- (a) a member of the LLC that is a company is a financial services company; and
- (b) a member of the LLC that is an LLC is treated, for the purposes of this paragraph, as satisfying the criteria in paragraph (4) (as are members of that LLC that are LLCs, and so on).”.

8 New Part 21B inserted

After Article 135B there is inserted –

“PART 21B

SPECIAL PROVISIONS FOR LIMITED LIABILITY COMPANIES (LLCS)

135C Secretary to provide returns

- (1) The Comptroller may, by notice, require the secretary of an LLC to provide a true, complete and correct return containing –
 - (a) the LLC’s financial statements for a financial period, including the amount of total income of the LLC for a financial period;
 - (b) for each member of the LLC –
 - (i) the member’s name and address, and
 - (ii) the proportion of the profits of the LLC for the financial period to which the member is entitled in accordance with Article 31 of the Limited Liability Companies (Jersey) Law 2018; and
 - (c) any other information required by the Comptroller.
- (2) The notice requiring the return may be –
 - (a) a general notice, published in a manner the Comptroller considers appropriate; or
 - (b) a notice served on the secretary by the Comptroller.
- (3) A return required under this Article must include a declaration by the person preparing and delivering it that, to the best of the person’s knowledge and belief, the return contains all of the required information and is true, complete and correct.
- (4) In this Article, “secretary” has the meaning given in Article 1(1) of the Limited Liability Companies (Jersey) Law 2018.

135D Income and property attributable to members

- (1) For the purposes of this Law, –
 - (a) the income of an LLC must be treated as the income of its members; and
 - (b) the property of an LLC must be treated as the property of its members.
- (2) The income of a member of an LLC for a financial period includes the proportion of the LLC’s income that is attributable to the member for the financial period (regardless of the amount actually distributed to the member during the financial period).
- (3) The proportion of an LLC’s income that is attributable to a member is the same as the proportion of the profits of the LLC to which the member is entitled in accordance with Article 31 of the Limited Liability Companies (Jersey) Law 2018.
- (4) In determining a member’s income, the Comptroller may rely on information included in a return required under Article 135C.

135E Residence of LLCs and members

- (1) An LLC is resident in Jersey for tax purposes unless its business is centrally managed and controlled in a country or territory outside of Jersey where –
 - (a) the highest rate at which an LLC or its members may be charged to tax on any part of its income is 10% or higher; or
 - (b) the LLC or its members are required to satisfy a test that is substantially the same as the economic substance test in Article 5 of the [Taxation \(Companies – Economic Substance\) \(Jersey\) Law 2019](#).
- (2) In determining whether a member of an LLC has a permanent establishment in Jersey, a permanent establishment of the LLC must be treated as being a permanent establishment of the member.

135F Other duties of LLCs unaffected

Nothing in this Part affects the separate legal personality of an LLC or any duties of an LLC under this Law as an employer or building contractor.”.

9 Citation and commencement

- (1) These Regulations may be cited as the Income Tax (Amendment of Law – Limited Liability Companies) (Jersey) Regulations 202-.
- (2) These Regulations come into force on the date that Article 60 of the [Limited Liability Companies \(Jersey\) Law 2018](#) comes into force (in accordance with an appointed day Act made under Article 63 of that Law).