STATES OF JERSEY

DRAFT INCOME TAX (AMENDMENT No. 44) (JERSEY) LAW 201-

Lodged au Greffe on 18th July 2014
by the Minister for Treasury and Resources

STATES GREFFE

Jersey

DRAFT INCOME TAX (AMENDMENT No. 44) (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. 44) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator P.F.C. Ozouf**

Minister for Treasury and Resources

Dated: 17th July 2014

REPORT

With Jersey's aging demographic, it is vitally important that the tax rules applying to pensions and pension schemes are fit for purpose. However, it has become apparent that the relevant tax rules in Jersey have not kept pace with modern society and are now lagging behind those applied in comparable jurisdictions.

In response, alongside the 2014 Budget, a consultation document (including draft legislation) was issued by the Treasury regarding proposed changes to the tax rules relating to pensions and pension schemes. The changes outlined in the consultation document sought to achieve the following aims –

- simplification of the tax rules;
- modernisation of the tax rules – including, in particular, the introduction of flexible retirement in the context of occupational pension schemes; and
- achieving greater consistency between the tax rules applying to occupational pension schemes and personal pension schemes, and between the tax rules applying to different forms of personal pension schemes, such that the tax incentives to transfer funds between pension schemes are minimised.

The overwhelming majority of respondents to the consultation were supportive of the general aims of modernisation and simplification, but they also challenged the initial proposals and identified different options. Having reviewed the consultation responses, a Report was presented to the States on 22nd May 2014 by the Minister for Treasury and Resources (see:

http://www.statesassembly.gov.je/AssemblyReports/2014/R.70-2014.pdf)

which summarised the consultation responses and outlined the changes that would be made to the initial proposals as a result of the consultation process.

The Draft Income Tax (Amendment No. 44) (Jersey) Law 201- proposes the necessary legislative changes to the Income Tax (Jersey) Law 1961 required to give effect to the changes to the relevant tax rules.

The Draft Income Tax (Amendment No. 44) (Jersey) Law 201- proposes that Part 19 of the Income Tax (Jersey) Law 1961 is rewritten to create a modern and flexible set of tax rules for pensions and pension schemes. The main changes proposed to the existing tax rules are outlined below –

- members of occupational pension schemes will no longer be required to retire before being able to draw a pension from their pension scheme;
- occupational pension schemes with members in Jersey and one or more other jurisdictions will be able to seek approval in Jersey for just the part of the scheme relating to the Jersey-based members;
- Retirement Annuity Trust Schemes ("RATS") will be renamed as Retirement Trust Schemes;
- non-resident individuals will be allowed to contribute into Retirement Trust Schemes;
- pension schemes will be able to allow a person suffering from serious ill-health to commute their pension fund at any time;
- pension schemes will have much greater flexibility over how they choose to pay out the 30% tax-free lump sum available from approved Jersey schemes;

- where a lump sum payment from an approved Jersey scheme is taxable (e.g. a lump sum paid following the death of the pension holder where the pension holder had already commencement benefits) it will be taxable at the rate of 10%, deducted by the scheme manager from the lump sum before it is paid;
- a much wider range of international pension fund transfers, both to and from Jersey, will be permitted;
- individuals will be able to access the flexibility of drawdown contracts where they have already taken a tax-free lump sum from their pension scheme; and
- the introduction of a potential benefit-in-kind for pension contributions made in the context of owner managers.

In addition, consequential amendments are made to a number of the other Articles of the Income Tax (Jersey) Law 1961 in order to reflect the changes made in Part 19.

If agreed by the States, the changes outlined in the Draft Income Tax (Amendment No. 44) (Jersey) Law 201- would come into effect from 1st January 2015.

Financial and manpower implications

No financial or manpower implications are anticipated as a result of the implementation of 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 TO REPORT

Human Rights Notes on the Draft Income Tax (Amendment No. 44) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Income Tax (Amendment No. 44) (Jersey) Law 201- (the "**draft Law**") by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("**ECHR**").

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The only part of the new provisions which touches on Convention rights is the new Article 131P. This essentially re-enacts existing provisions on the withdrawal of approval, and the consequential tax charge of up to 50% of the value of the Fund (or part of the Fund affected by the withdrawal of approval). That tax charge may be greater than the tax benefit that approval gives. However, the imposition of liability on those who wrongly seek a tax benefit is common in tax systems.

The questions of withdrawal of approval and the resulting tax charge are both subject to appeal to the tax commissioners. It is particularly noted that the liability to tax on withdrawal of approval must be abated to a level that is fair, just and reasonable. This would mean that the Tribunal would reduce it to a level that represented a removal of any benefit gained from wrongly having approved status, and any further liability would represent a fair, just and reasonable amount to sanction deliberate or reckless default.

The Law Officers have no doubt that the system of withdrawal of approved status and the tax charge represent a "fair balance" of public and private rights. The system of court oversight would satisfy the fair hearing requirements of the Convention, and so it is not necessary to consider the question of whether this as a tax case would fall outside Article 6 of the Convention by reason of the Ferrazzini decision.

For these reasons, the draft Law is plainly compatible with the Human Rights (Jersey) Law 2000.

Explanatory Note

This Law re-enacts, with substantive and structural changes, almost all of Part 19 of the Income Tax (Jersey) Law 1961 (the "1961 Law"). Part 19 contains provisions for taxation relating to pensions.

Article 1 defines the 1961 Law.

Article 2 amends Article 3 of the 1961 Law, which contains general provisions for interpretation. The amendments are consequential upon the amendments made by Article 11 of this draft Law.

Article 3 amends Article 41A of the 1961 Law, which imposes a duty on certain taxpayers to pay an instalment of tax in April each year. The amendment makes it clear that the requirement to pay an instalment doesn't apply to any tax that the scheme manager of an approved Jersey scheme, an approved drawdown contract or an approved trust is required to pay in accordance with Part 19 of the 1961 Law.

Article 4 amends Article 62 of the 1961 Law. The amendment clarifies the Case, in Schedule D, under which pension income or a lump sum paid in commutation of a pension, is to be taxed.

Article 5 inserts Article 77A in the 1961 Law. It is, essentially, a relocation of the provision currently made by Article 130 of the 1961 Law.

Article 6 amends Article 81 of the 1961 Law. Article 81 contains rules for the computation of tax under Cases VI and VII of Schedule D. Generally, tax is charged under Case VI or VII at the rate of 20% on the full amount of a person's profits or gains arising in the year. The amendment cross-refers to exceptions from that rule, whether the exception is to apply a different rate of tax or charge tax on a different amount.

Article 7 amends Article 82 of the 1961 Law. Paragraph (1) of that Article imposes the charge to tax under Schedule D on the persons receiving or entitled to the income to be taxed under that Schedule. This amendment directs the reader to exceptions to that rule, in particular, to instances where a scheme manager is charged to tax on a lump sum being paid out of a pension fund, and is required to recover the tax by deducting it from the lump sum before paying it.

Article 8 amends Article 87 of the 1961 Law. Article 87 requires the deduction of tax before a payment is made out of certain gross profits or gains. The amendment has the effect that Article 87 no longer applies to annuities paid under retirement annuity contracts or to annuity equivalents paid under Jersey retirement trust schemes (formerly known as retirement annuity trust schemes).

Article 9 removes tax exemptions for the income of pension funds and annuities from Article 115 of the 1961 Law. Part 19 of the 1961 Law, as amended by *Article 11*, will contain all the rules relating to taxation of pensions.

Article 10 inserts Article 123G in the 1961 Law. Article 123G makes it clear that the rules in Part 17 of the 1961 Law for companies to be taxed at 0% or 10% are subject to any rule in Part 19 of the 1961 Law that charges tax on a scheme manager of an approved Jersey scheme.

Article 11 substitutes Articles 130 to 131G in Part 19 of the 1961 Law. The provisions that replace them are structured as follows –

> Articles 130, 130A, 130B and 130C contain definitions and other provisions for interpretation.

Articles 131, 131A, 131B, 131C and 131CA provide for the approval of the pension schemes or arrangements.

Articles 131CB, 131CC, 131CD, 131CE, 131CF and 131CG contain provisions as to the payments that must or may be paid out of approved Jersey schemes.

Articles 131D, 131E and 131F re-enact existing associated provisions regarding approved drawdown contracts, approved trusts and minimum retirement income.

Articles 131G, 131H, 131I, 131J, 131K, 131L and 131N contain the rules for taxation relating to approved Jersey schemes.

Article 131M contains rules for taxation relating to approved drawdown contracts and approved trusts.

Article 131O contains the rules relating to taxation of approved schemes for non-residents.

Article 131P sets out the procedure for withdrawal of approval under Part 19 of the 1961 Law and Article 131Q confers rights of appeal against decisions under Part 19.

Article 131R is an Order-making power.

A detailed explanation of these substituted Articles follows –

Interpretation

130 Interpretation of Part 19

This Article defines expressions used in Part 19 of the 1961 Law. In particular, “approved Jersey scheme” means an approved Jersey occupational scheme, an approved Jersey retirement annuity contract or an approved Jersey retirement trust scheme.

130A Dependants

This Article defines who is a dependant of a pension holder, for the purposes of Part 19 of the Law.

130B Fund value

This Article defines the value of a pension holder’s pension fund, according to whether the pension holder is in a defined contribution scheme, a defined benefit scheme or has made a retirement annuity contract or is the primary beneficiary of a retirement trust scheme.

130C Relevant earnings

This Article defines an individual’s relevant earnings. The definition is needed for rules, in Article 131I, described below regarding the tax treatment of a pension holder’s contributions to an approved Jersey scheme.

Approvals

131 Approval of Jersey occupational pension schemes

This Article specifies the rules that a scheme must comply with in order to be an approved Jersey occupational pension scheme. The scheme must be established in connection with a trade or undertaking that has employees in Jersey, in order to provide an income for life for those employees. If only part of the scheme has that purpose, the approval would be of that part of the scheme only. This Article replaces the current Article 131 (Superannuation funds and pension schemes) of the 1961 Law.

131A Approval of occupational pension schemes for overseas employees

This Article is also concerned with occupational pension schemes – but where the trade or undertaking is carried on outside Jersey by a non-resident, and the employees are employed outside Jersey. It replaces the current Article 131A (Exemption of superannuation funds for overseas employees) of the 1961 Law.

131B Approval of Jersey retirement annuity contracts

This Article specifies the rules that a retirement annuity contract made by a Jersey resident must comply with in order to be approved. It replaces the current Article 131B (Annuity contracts) of the 1961 Law.

131C Approval of retirement annuity contracts for overseas residents

This Article provides for the approval of retirement annuity contracts made by non-residents. It replaces the current Article 131C (Annuity contracts for overseas residents) of the 1961 Law.

131CA Approval of Jersey retirement trust schemes

This Article provides for the approval of retirement trust schemes established and administered in Jersey. This Article replaces the current Article 131CA (Retirement annuity trust schemes) of the 1961 Law.

Payments from approved Jersey schemes

131CB Requirement to pay pension income

This Article is a general rule that pension payments from an approved Jersey scheme cannot commence before the pension holder reaches the age of 50, but must commence before the pension holder reaches the age of 75. There are exceptions to this rule, which follow.

131CC Permitted early payment of pension income

This Article allows an approved Jersey scheme to provide for the payment of pension income before a pension holder reaches the age of 50 if the pension holder is in ill health (defined in the substituted Article 130(3)(a)) or if the pension holder's employment or occupation is one from which individuals customarily retire before the age of 50.

131CD Permitted commutation – serious ill health

This Article allows an approved Jersey scheme to permit a pension holder who is in serious ill health to commute the whole of his or her pension fund, irrespective of his or her age at the time. "Serious ill health" is defined in the substituted Article 130(3)(b).

131CE Permitted commutation – trivial pension

This Article allows an approved Jersey scheme to permit a pension holder to commute the whole of a trivial pension fund. A pension holder must be aged 60 or more to commute a pension under this Article and must not have started to draw benefits from the pension. The aggregate value of the pensions commuted by a pension holder under this Article cannot exceed £30,000.

131CF Permitted commutation – thirty percent of net fund value

This Article allows an approved Jersey scheme to permit a pension holder to commute part of a pension fund. A commutation can be made at any time when the pension holder is between the ages of 50 and 75. Up to 30% of the net fund value can be commuted on any one occasion. More than one commutation may be made, but the amount of previous commutations is taken into account so as to reduce the net fund value at the time of commutation. Furthermore, if the pension holder has transferred into the pension fund the proceeds of another pension, the proceeds transferred in shall be disregarded, in calculating the net fund value, if the transfer is from another approved Jersey scheme (or was from a scheme approved before the commencement of this Law) which the pension holder has already partially commuted under this Article or if the transfer is from an equivalent scheme established outside Jersey, and the pension holder has already partially commuted his or her fund in that scheme, and the amount commuted was not liable to tax.

131CG Permitted transfers from and to approved Jersey schemes and to approved drawdown contracts

This Article allows the transfer of the whole of a fund in an approved Jersey scheme to another approved Jersey scheme. Partial transfers are also allowed, with the prior approval of the Comptroller. This Article also allows the transfer of the whole of a fund in an approved Jersey scheme to an approved drawdown contract, but only after payments of pension income could have commenced from the approved Jersey scheme. In addition, the Comptroller may approve a transfer of the whole of a fund in an approved Jersey scheme to an equivalent scheme established outside Jersey, if the person requesting the transfer is not resident in Jersey. An approved Jersey scheme may also permit transfers into the scheme from an equivalent scheme established outside Jersey.

Approved drawdown contracts and approved trusts

131D Approved drawdown contract

This Article describes the requirements that a drawdown contract must satisfy in order to be approved. This Article and the following 2 Articles are re-enactments of the existing Articles 131D, 131E and 131F of the 1961 Law.

131E Approved trust

This Article describes the conditions that a trust must comply with in order to be approved. Approved trusts are associated with approved drawdown contracts. Establishing an approved trust is an alternative to purchasing a lifetime annuity in order to provide the minimum retirement income for a person who makes an approved drawdown contract.

131F Minimum retirement income

This Article specifies how an individual's minimum retirement income is to be determined, for the purposes of Articles 131D and 131E.

131G Taxation of approved Jersey schemes, drawdown contracts and trusts

This Article provides that the income from investments and deposits in approved Jersey schemes, approved drawdown contracts and approved trusts is exempt from income tax.

131H Allowance for contributions to approved Jersey occupational pension scheme by employer

This Article provides that the contributions made by an employer to an approved Jersey occupational pension scheme are a tax deductible expense of the employer's business. Annual contributions routinely made by an employer are treated as an expense in the year in which they are paid. If the employer makes additional contributions, the Comptroller will direct whether they are to be treated as an expense in the year in which they are paid, or whether they are to be treated as an expense spread over a number of years.

131I Allowance for contributions paid to approved Jersey schemes by pension holder

This Article provides that, generally, a pension holder's contributions to an approved Jersey scheme are a tax deductible expense. There is a cap on the amount of annual contributions that are tax deductible. The cap is whichever is the lesser of –

- £50,000, less the pension holder's excess income; and
- the pension holder's relevant earnings, less the pension holder's excess income.

For this purpose, a pension holder's excess income is the amount (if any) by which his or her total income (before deduction of interest relief under Article 90AA of the 1961 Law and deduction of his or her contributions to approved Jersey schemes) exceeds £150,000.

131J Taxation relating to repayment of contributions made to approved Jersey schemes

Contributions and accrued interest that are repaid to an employer are treated as receipts of the business.

Contributions and accrued interest that are repaid to the pension holder in an approved Jersey occupational pension scheme, as permitted by Article 131(12), are taxed at 10%. The scheme manager is liable to the tax, and must deduct it before repaying the pension holder. The amount received by the pension holder is not liable to any further tax in his or her hands, but he or she does not receive any credit or relief for the tax paid by the scheme manager.

131K Taxation of pension income paid from approved Jersey scheme

Generally, pension income paid from an approved Jersey scheme is taxed at 20%, which the scheme manager must deduct before making the payment. The income paid is, for taxation purposes, treated as the recipient's earned income. The Comptroller may direct that income tax is deducted at a lower rate.

131L Taxation of lump sum paid from approved Jersey scheme to pension holder or dependant

Generally, when a lump sum is paid in commutation of the whole or part of a fund in an approved Jersey scheme, the payment is taxed at 10%. The scheme manager is liable to the tax and must deduct it before making the payment. However –

- no tax is charged when a fund in an approved Jersey scheme is commuted by reason of the pension holder's serious ill health, provided that the pension holder has not started to receive income from the scheme and has not previously commuted part of the fund;
- 30% of a lump sum paid in commutation of a trivial fund in an approved Jersey scheme is exempt from tax;
- no tax is charged when 30% of the net fund value of a fund in an approved Jersey scheme is commuted;
- no tax is charged when, following the death of the pension holder in an approved Jersey scheme, the fund is commuted as permitted by the conditions of approval, provided that the deceased pension holder had not started to receive pension income and had not commuted part of the fund.

A lump sum paid as described in this Article is not subject to tax, or further tax, in the hands of the recipient. Equally, the recipient is not entitled to any deduction or relief for any tax deducted from the lump sum.

131M Taxation of sums paid from approved drawdown contracts and approved trusts

A scheme manager making a payment from an approved drawdown contract or approved trust must deduct income tax at 20%. The payment from the contract or trust is, for taxation purposes, treated as earned income of the recipient.

131N Exemption from tax for transfer from approved Jersey scheme to equivalent scheme

If the Comptroller has approved a transfer of the fund from an approved Jersey scheme to an equivalent scheme outside Jersey, as permitted by Article 131CG, no tax is paid on the amount transferred.

131O Taxation of approved overseas schemes

No tax is charged on pension income or a lump sum paid to a non-resident from a scheme for overseas employees approved under Article 131A or a retirement annuity contract for an overseas resident.

Withdrawal of approval and appeals

131P Withdrawal of approval

This Article permits the Comptroller to withdraw any approval under Part 19 of the 1961 Law and describes the process for withdrawal of approval. The consequence of withdrawal of approval is that the scheme assets or, if greater, the contributions made and income accrued, are liable to tax at 50%, although the Comptroller has a discretion to abate this charge, if he or she thinks it just and reasonable to do so.

131Q Appeals against decisions of the Comptroller under this Part

This Article confers a right of appeal against any decision of the Comptroller under Part 19 of the 1961 Law. The appeal is to a Commission of Appeal constituted under the 1961 Law.

Miscellaneous

131R Order-making powers

This Article enables the Minister for Treasury and Resources to make Orders specifying the procedures to be followed when granting or refusing approvals under Part 19 of the 1961 Law and specifying the information to be provided when applying for an approval under Part 19.

Article 12 amends Schedule 2 to the 1961 Law. Schedule 2 describes benefits that are to be disregarded when benefits in kind are taxed. Generally, contributions paid to an approved Jersey scheme are to be disregarded. However, if the contributions are paid by a company owned by the pension holder, the exemption is limited to an amount equal to 25% of the pension holder's relevant earnings from the company.

Article 13 provides for the citation of this Law and its commencement on 1st January 2015.

Jersey

DRAFT INCOME TAX (AMENDMENT No. 44) (JERSEY) LAW 201-

Arrangement

Article

DRAFT INCOME TAX (AMENDMENT No. 44) (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 Interpretation

In this Law "principal Law" means the Income Tax (Jersey) Law 1961[1].

2 Article 3 amended

In Article 3(1) of the principal Law –

(a) in the definition "annuity equivalent" for the words "Article 131CA(1)(a)" there shall be substituted the words "Article 131CA(1)";

(b) in sub-paragraph (d) of the definition "earned income" for the words "any provision of this Law" there shall be substituted the words "Article 77AA(2)(b), Article 131K(1), Article 131M(2) or any other provision of this Law";

(c) the following definitions shall be deleted –

(i) "approved drawdown contract",

(ii) "approved trust",

(iii) "minimum retirement income",

(iv) "related earnings".

3 Article 41A amended

In Article 41A(12) of the principal Law for sub-paragraph (b) there shall be substituted the following sub-paragraph –

"(b) to a scheme manager of an approved Jersey scheme, an approved drawdown contract or an approved trust, as defined in Article 130, in respect of any tax charged on the scheme manager under Part 19.".

4 Article 62 amended

In Article 62(1) of the principal Law –

(a) at the end of sub-paragraph (b) of Case II there shall be added the word "and";

(b) for sub-paragraphs (c) and (d) of Case II there shall be substituted the following sub-paragraph –

"(c) all payments which, by virtue of Article 131K(1), are to be treated as earned income;";

(c) for sub-paragraph (d) of Case III there shall be substituted the following sub-paragraph –

"(d) subject to any exemption in Part 19 –

(i) any payment of a pension (other than a payment which is taxed under Case II, in accordance with sub-paragraph (c) of that Case) whether paid voluntarily or otherwise and whether capable of being discontinued or not, and

(ii) any lump sum paid in commutation of or otherwise in lieu of a pension, or by way of return of contributions paid by a pension holder, other than a payment which is taxed under Case VI, in accordance with Article 131J(2)(a) or 131L(1);".

5 Article 77AA inserted

After Article 77 of the principal Law there shall be inserted the following Article –

"77AA Social Security allowances

(1) This Article applies to payments of benefits under the Social Security (Jersey) Law 1974[2], other than payments of maternity benefit, sickness benefit, accident benefit and death grant.

(2) A payment of benefit to which this Article applies shall –

(a) be charged to income tax under Case II of Schedule D; and

(b) subject to paragraph (3), be deemed for all the purposes of this Law to be earned income.

(3) A payment of benefit to which this Article applies shall only be treated as earned income of a wife for the purposes of Article 92A(4) if it is –

(a) an old age pension payable to the wife by virtue of her own insurance; or

(b) home carer's allowance payable to the wife.".

6 Article 81 amended

In Article 81(1) of the principal Law for the words "Articles 86(2)(e) and 131G(5)," there shall be substituted the words "Articles 86(2)(e), 131J(2)(a), 131L(1) and 131P(6),".

7 Article 82 amended

In Article 82(1) of the principal Law for the words "Subject to paragraph (2)," there shall be substituted the words "Subject to paragraph (2) of this Article, Articles 131J(2)(a), 131L(1) and 131P(6) and any other provision of this Law".

8 Article 87 amended

In Article 87 of the principal Law –

(a) in paragraph (1)(a) the words ", annuity equivalent" shall be deleted;

(b) the word "or" shall be inserted following paragraph (1)(a);

(c) paragraph (1)(c) and the word "or" following sub-paragraph (b) shall be deleted;

(d) in paragraph (1) for the words "in the case of an annuity or annuity equivalent," there shall be substituted the words "in the case of an annuity,";

(e) the word "or" shall be inserted following paragraph (4)(a);

(f) paragraph (4)(c) and the word "or" following paragraph (4)(b) shall be deleted;

(g) after paragraph (5) there shall be added the following paragraph –

"(6) This Article does not apply to any annuity paid under a retirement annuity contract approved under Article 131B or 131C.".

9 Article 115 amended

In Article 115 of the principal Law, paragraphs (f), (fa), (faa), (fab) and (fb) shall be deleted.

10 Article 123G inserted

After Article 123F of the principal Law there shall be inserted the following Article –

"123G Exception for pension scheme manager, etc.

Articles 123C(2) and 123D(2) are subject to –

(a) any provision of Part 19 that charges income tax on the scheme manager of an approved Jersey scheme, approved drawdown contract or approved trust, as defined in that Part; and

(b) any charge to income tax that arises on any person under Article 131P(6).”.

11 Articles 130 to 131G substituted

For Articles 130 to 131G of the principal Law there shall be substituted the following cross headings and Articles –

“*Interpretation*

130 Interpretation of Part 19

(1) In this Part –

‘approved drawdown contract’ means a contract approved under Article 131D;

‘approved Jersey occupational pension scheme’ means a scheme approved under Article 131;

‘approved Jersey retirement annuity contract’ means a contract approved under Article 131B;

‘approved Jersey retirement trust scheme’ means a scheme approved under Article 131CA;

‘approved Jersey scheme’ means –

(a) an approved Jersey occupational pension scheme;

(b) an approved Jersey retirement annuity contract;

(c) an approved Jersey retirement trust scheme;

‘approved trust’ means a trust approved under Article 131E;

‘dependant’ has the meaning given in Article 130A;

‘fund value’ has the meaning given in Article 130B;

‘ill health’ has the meaning given in paragraph (3)(a);

‘minimum retirement income’ has the meaning given in Article 131F;

‘pension holder’ means –

(a) in relation to an approved Jersey occupational pension scheme, a member of the scheme, as described in Article 131;

(b) in relation to an approved Jersey retirement annuity contract, the individual by whom the contract was made;

(c) in relation to an approved Jersey retirement trust scheme, the primary beneficiary;

‘pension income’ means –

(a) in relation to an occupational pension scheme, an income paid for the life of the recipient;

(b) in relation to a retirement annuity contract, any annuity payable under the contract;

(c) in relation to a retirement trust scheme, sums payable under the scheme by way of annuity equivalent;

'pensionable age' has the same meaning as in the Social Security (Jersey) Law 1974[3];

'prescribed' means prescribed by Order of the Minister;

'primary beneficiary', in relation to a retirement trust scheme, has the meaning given in Article 131CA(1);

'relevant earnings' has the meaning given in Article 130C;

'scheme manager' means –

(a) in the case of an occupational pension scheme that is established as a trust, or in the case of a retirement trust scheme, the trustees;

(b) in the case of an occupational pension scheme that is established otherwise than as a trust, the person having management of the scheme;

(c) in the case of a retirement annuity contract, the person having control of the fund;

(d) in the case of a drawdown contract, the manager;

'secondary beneficiary', in relation to a retirement trust scheme, has the meaning given in Article 131CA(1);

'serious ill health' has the meaning given in paragraph (3)(b).

(2) In this Part –

(a) a reference to the commencement of benefits is, in relation to a pension, a reference to whichever is the earlier of –

(i) an election by the pension holder to receive a lump sum by way of commutation of part of the fund value,

(ii) the day from which pension income is paid to the pension holder, whether or not the pension holder actually receives a payment on that day; and

(b) where –

(i) a pension holder transfers the whole or part of his or her fund value in an approved Jersey scheme to another approved Jersey scheme, and

(ii) benefits have commenced from the scheme from which the fund value is transferred,

benefits shall be taken to have commenced from the scheme to which the fund value is transferred.

(3) For the purposes of this Part –

(a) a pension holder is in ill health if –

(i) a medical practitioner has, in writing, provided evidence to the scheme manager that the pension holder is, and will continue to be, incapable of carrying on his or her occupation because of physical or mental impairment, and

(ii) the pension holder has in fact ceased to carry on his or her occupation;

(b) a pension holder is in serious ill health if a medical practitioner has, in writing, provided evidence to the scheme manager that the pension holder is expected to live for less than one year.

130A Dependants

(1) For the purposes of this Part, a person is a dependant of a pension holder if he or she was married to, or the civil partner of, the pension holder –

(a) at the date of the pension holder's death; or

(b) if the rules of an occupational pension scheme, retirement annuity contract or retirement trust scheme so provide, on the date when the pension holder first became entitled to a pension under the scheme or contract.

(2) For the purposes of this Part, a child of a pension holder is a dependant of the pension holder if the child –

(a) has not attained the age of 23; or

(b) has attained that age and, in the opinion of the scheme manager, was at the date of the pension holder's death dependant on the pension holder because of physical or mental impairment.

(3) A person who was not married to, or a civil partner of, a pension holder at the date of the pension holder's death and is not a child of the pension holder is a dependant of the pension holder if, in the opinion of the scheme manager, at the date of the pension holder's death –

(a) the person was financially dependant on the pension holder;

(b) the person's financial relationship with the pension holder was one of mutual dependance; or

(c) the person was dependant on the pension holder because of physical or mental impairment.

130B Fund value

(1) For the purposes of this Part 'fund value' means, at any time –

(a) in relation to a member of an occupational pension scheme that is a defined contribution scheme, or, following the death of the member, his or her estate or any person entitled to a payment from the scheme, as permitted by Article 131(9), the aggregate, at that time, of the amounts accumulated in the scheme for the benefit of the member or of his or her estate or any person, as the case requires;

(b) in relation to a member of an occupational pension scheme that is a defined benefit scheme or, following the death of the member, his or her estate or any person entitled to a payment from the scheme, as permitted by Article 131(9), the capital value of the benefits to which the member, or his or her estate or any person, as the case requires, is entitled at that time, calculated by an actuary;

(c) in relation to an individual who has made a retirement annuity contract or the primary beneficiary of a retirement trust scheme or, following the death of the individual or primary beneficiary, his or her estate or any person entitled to a payment from the contract or scheme, as permitted by Article 131B(7) or 131CA(6), the fund accumulated under the contract or trust at that time.

(2) In paragraph (1) –

‘actuary’ means a person who is or a body of persons each of whom is a Fellow of the Institute and Faculty of Actuaries;

‘defined benefit scheme’ means a scheme where the scheme rules define the benefit independantly of the contributions payable and benefits are not directly related to the investments of the scheme;

‘defined contribution scheme’ means a scheme where the benefits of a member under the scheme are determined by reference to contributions paid into the scheme in respect of that member, usually increased by an amount based on profits and gains arising from those contributions.

130C Relevant earnings

(1) In this Part, ‘relevant earnings’ means, in relation to an individual, any of his or her income assessed to tax being –

(a) income arising in respect of emoluments from an office or employment held by the individual; or

(b) income which is charged under Schedule D and is immediately derived by the individual from the carrying on or exercise by the individual of his or her trade, profession or vocation, either as an individual or, in the case of a partnership, as a partner personally acting in the partnership.

(2) In paragraph (1)(a), ‘emoluments’ do not include pension income.

(3) For the purposes of this Part –

(a) a married woman’s relevant earnings shall not be treated as her husband’s relevant earnings, notwithstanding that her income chargeable to tax is treated as his income;

(b) a civil partner B’s relevant earnings shall not be treated as the civil partner A’s relevant earnings, notwithstanding that civil partner B's income chargeable to tax is treated as civil partner A's income.

Approvals

131 Approval of Jersey occupational pension schemes

(1) A scheme or, in accordance with paragraph (5), part of a scheme, shall be approved as a Jersey occupational pension scheme if it complies with this Article.

(2) The scheme must be –

(a) a superannuation fund bona fide established under irrevocable trusts; or

(b) a scheme bona fide established,

in connection with some trade or undertaking.

(3) The scheme must have for its sole purpose the provision of an income for life for all or any of –

(a) one or more persons who are or have been employed, in Jersey, in the trade or undertaking; and

(b) following the death of such a person, one or more of his or her dependants.

(4) If a scheme having the purpose described in paragraph (3) also has the further purpose of making a lump sum payment upon the death of a person described in paragraph (3)(a), the purpose described in paragraph (3) includes that further purpose.

(5) If only part of the scheme has the purpose described in paragraph (3) –

(a) only the part of the scheme that has the purpose described in paragraph (3) must comply with paragraphs (6) to (16); and

(b) the approval under this Article shall be of only the part of the scheme that has the purpose described in paragraph (3), and references in this Article to the scheme or, in this Part, to a scheme approved under this Article, shall be construed as references to only so much of the scheme as is so approved.

(6) The scheme may only permit a person –

(a) to become a member of the scheme; or

(b) to contribute to the scheme,

whilst he or she is an employee of the trade or undertaking.

(7) The person carrying on the trade or undertaking (the 'employer') must contribute to the scheme.

(8) The scheme –

(a) must provide for the payment of an income for life to a member in accordance with Article 131CB;

(b) may only otherwise provide for payments from the scheme as permitted by this Article and Articles 131CC to 131CG.

(9) The scheme may provide for the payment, following the death of a member, of –

(a) an income for life to one or more of the member's dependants; or

(b) a lump sum to the member's estate or to any person.

(10) Despite paragraph (8)(a) the scheme may provide for –

(a) the income payable to the member to continue for a term certain, not exceeding 10 years and commencing with the commencement of payment of such income, as described in Article 130(2)(a)(ii), notwithstanding the member's death within that term; and

(b) such income, in the event that the member dies entitled to it, to be capable of assignment to a dependant of the member –

(i) by testamentary disposition made by the member, or

(ii) if the member dies intestate, by the member's personal representatives, in the distribution of the member's estate in accordance with the laws of intestacy.

(11) The scheme may permit a member –

(a) to receive a return of contributions, in accordance with paragraph (12);

(b) to commute the fund value, in accordance with paragraphs (13) and (14).

(12) The scheme may permit the member to elect to be paid a sum representing the contributions made by the member to the scheme, and any interest accrued on them, where, at the time of the election –

(a) the member has been a member of the scheme for less than 5 years;

(b) the member has ceased to be employed by the employer; and

(c) the member has not commenced benefits.

(13) The scheme may permit the member to elect to commute the whole of the fund value where –

(a) at the time of the election –

(i) either –

(A) before the member has commenced benefits, the member has ceased to be employed by the employer, or

(B) the member no longer accrues rights under the scheme, by reason of its winding up or closure in respect of any class of member in which he or she is included,

(ii) the employer does not make any contributions on the member's behalf to another approved Jersey scheme, and

(iii) the member's fund value does not exceed £18,000; and

(b) following the payment, the member is not entitled to any further payment from the scheme.

(14) The scheme may not permit a commutation under paragraph (13) where the member's fund value includes any amount transferred from another scheme, trust or contract.

(15) The scheme may only permit all or part of the employer's contributions to be returned to the employer, with or without interest, with the prior written approval of the Comptroller.

(16) The scheme and the scheme manager must comply with –

(a) any prescribed conditions and requirements; and

(b) any additional conditions and requirements imposed in its case by the Comptroller.

(17) For the purposes of this Article, a reference to a person employed in, or an employee of, a trade or undertaking, includes –

(a) in relation to the scheme established by Regulations made under Article 2(1) of the Public Employees (Retirement) (Jersey) Law 1967[4], any person who, pursuant to Article 1(2) of that Law, is taken to be employed by the States Employment Board; and

(b) in relation to the Scheme established by Regulations made under Article 2 of the Public Employees (Pensions) (Jersey) Law 201-[5], any person who, pursuant to Article 1(2) of that Law, is taken to be an employee of the States Employment Board.

131A Approval of occupational pension schemes for overseas employees

(1) A scheme or, in accordance with paragraph (4), part of a scheme, shall be approved as an occupational pension scheme for overseas employees if it complies with this Article.

(2) The scheme must be a superannuation fund bona fide established under irrevocable trusts in connection with some trade or undertaking carried on –

(a) wholly or partly outside Jersey; and

(b) by a person not resident in Jersey.

(3) The scheme must have for its sole purpose the provision of superannuation benefits in respect of persons' employment in the trade or undertaking wholly outside Jersey.

(4) If only part of the scheme has the purpose described in paragraph (3) –

(a) only the part of the scheme that has the purpose described in paragraph (3) must comply with paragraph (5); and

(b) the approval under this Article shall be of only the part of the scheme that has the purpose described in paragraph (3), and references in this Article to the scheme or, in this Part, to a scheme approved under this Article, shall be construed as references to only so much of the scheme as is so approved.

(5) The scheme and the scheme manager must comply with –

(a) any prescribed conditions and requirements; and

(b) any additional conditions and requirements imposed in its case by the Comptroller.

(6) For the purposes of this Article, duties performed in Jersey, the performance of which is merely incidental to the performance of other duties outside Jersey, shall be treated as performed outside Jersey.

131B Approval of Jersey retirement annuity contracts

(1) A contract shall be approved as a Jersey retirement annuity contract if it complies with this Article.

(2) The contract must be made –

(a) by an individual who is ordinarily resident in Jersey;

(b) with a company to which this Article applies.

(3) This Article applies to a company carrying on in Jersey or Guernsey the business of granting annuities on human life, and being –

(a) a company resident in Jersey;

(b) an authorized insurance company; or

(c) a person or institution authorized, in accordance with the laws of the United Kingdom, to carry on the business of granting annuities on human life and carrying on business through a branch or agency in Jersey or Guernsey.

(4) Any annuity payable under the contract must be paid by an authorized insurance company carrying on in Jersey or Guernsey the business of granting annuities on human life.

(5) The contract may not provide for contributions to be made by any person apart from –

(a) the individual who made the contract; and

(b) a person from whom that individual receives relevant earnings.

(6) The contract –

(a) must provide for the payment of an annuity to the individual, for the life of the individual, in accordance with Article 131CB;

(b) may only otherwise provide for payments as permitted by this Article and Articles 131CC to 131CG.

(7) The contract may provide for the payment, following the death of the individual, of either or both of –

(a) an annuity to one or more of the individual's dependants, for the life of the dependant;

(b) a lump sum commuting the whole of the fund value, to be paid to the individual's estate or to any person.

(8) Despite paragraphs (6)(a) and (7)(a), the contract may provide for –

(a) the annuity payable to the individual under the contract to continue for a term certain, not exceeding 10 years and commencing with the day payments of the annuity commence, whether or not the individual actually receives a payment on that day, notwithstanding the individual's death within that term;

(b) such an annuity, in the event that the individual dies entitled to it, to be capable of assignment to a dependant of the individual –

(i) by testamentary disposition made by the individual, or

(ii) if the individual dies intestate, by the individual's personal representatives, in the distribution of the individual's estate in accordance with the laws of intestacy.

(9) The contract, the company to which this Article applies and the company paying the annuity must comply with –

(a) any prescribed conditions and requirements; and

(b) any additional conditions and requirements imposed in its case by the Comptroller.

131C Approval of retirement annuity contracts for overseas residents

(1) A contract shall be an approved retirement annuity contract for an overseas resident if it complies with this Article.

(2) The contract must be made by an individual –

(a) who is not resident in Jersey; and

(b) whose employment, trade or profession, if any, is exercised outside Jersey.

(3) The contract must be made –

(a) with a company carrying on business through a branch in Jersey and carrying on, in Jersey, the business of granting annuities on human life; or

(b) under an irrevocable trust established under the law of Jersey and administered in Jersey and having for its sole purpose the provision of retirement benefits for the individual.

(4) The contract may provide for the right to receive, by way of commutation, a lump sum representing the fund value.

(5) The contract and the company with which it is made or the trustees of the trust under which it is made must comply with –

(a) any prescribed conditions and requirements; and

(b) any additional conditions and requirements imposed in its case by the Comptroller.

(6) For the purposes of this Article, duties performed in Jersey, the performance of which is merely incidental to the performance of other duties outside Jersey, shall be treated as performed outside Jersey.

131CA Approval of Jersey retirement trust schemes

(1) In this Article, unless the context otherwise requires –

‘annuity equivalent’ means a regular payment made to a primary beneficiary or to a secondary beneficiary under a retirement trust scheme;

‘primary beneficiary’ means the individual for whose benefit the trust is primarily established;

‘secondary beneficiary’ means a dependant of the primary beneficiary;

‘trustees’ include a single corporate trustee.

(2) A scheme shall be approved as a Jersey retirement trust scheme if it complies with this Article.

(3) The scheme must –

(a) be established under irrevocable trusts under Jersey law and administered in Jersey;

(b) have as its sole purpose making provision for benefits in accordance with this Article; and

(c) have 2 or more trustees or a corporate trustee, who are subject to regulation by the Jersey Financial Services Commission under an enactment in respect of the carrying on of the business of trustee of that trust.

(4) Contributions –

(a) may be paid into the scheme by the primary beneficiary;

(b) may not be paid into the scheme by any other person, other than a person from whom the primary beneficiary receives relevant earnings.

(5) The scheme –

(a) must provide for the payment of sums payable by way of annuity equivalent to the primary beneficiary, in accordance with Article 131CB;

(b) may only otherwise provide for payments as permitted by this Article and Articles 131CC to 131CG.

(6) The scheme may provide, following the death of the primary beneficiary –

(a) for the payment of a sum by way of annuity equivalent to one or more secondary beneficiaries; or

(b) for the payment of a lump sum commuting the whole of the fund value to the primary beneficiary's estate or to any person.

(7) The scheme must require the scheme manager –

(a) to calculate the amount of an annuity equivalent in accordance with a calculation published by the Comptroller;

(b) to make the calculation –

(i) before payment of an annuity equivalent commences, and

(ii) from time to time after payment has commenced, in accordance with guidance published by the Comptroller;

(c) to keep a record of calculations made under this paragraph; and

(d) to pay an annuity equivalent, whether to a primary or secondary beneficiary, in an amount permitted by the calculation and guidance published by the Comptroller.

(8) The scheme and its trustees must comply with –

(a) any prescribed conditions and requirements; and

(b) any additional conditions and requirements imposed in its case by the Comptroller.

Payments from approved Jersey schemes

131CB Requirement to pay pension income

Except as permitted by or under any provision of this Part, the payment of pension income to a pension holder in an approved Jersey scheme –

(a) must not commence before the pension holder attains the age of 50;

(b) must commence before the pension holder attains the age of 75.

131CC Permitted early payment of pension income

An approved Jersey scheme may provide for the payment of pension income to the pension holder to commence before the pension holder attains the age of 50 –

(a) if the pension holder is in ill health; or

(b) if –

(i) in the case of a member of an approved Jersey occupational pension scheme, the member's employment in the trade or undertaking is one in which persons customarily cease work before attaining that age, or

(ii) in the case of a pension holder in any other approved Jersey scheme, the pension holder's occupation is one in which persons customarily cease work before attaining that age.

131CD Permitted commutation – serious ill health

An approved Jersey scheme may permit the pension holder to elect to commute the whole of the fund value if he or she is in serious ill health, whether or not he or she has attained the age of 50.

131CE Permitted commutation – trivial pension

(1) An approved Jersey scheme may permit the pension holder to elect to commute the whole of the fund value if, at the time the election is made –

(a) the pension holder has attained the age of 60;

(b) the pension holder has not commenced benefits under the scheme; and

(c) the aggregate of the following amounts does not exceed £30,000 –

(i) the fund value,

(ii) all lump sums that the pension holder has previously commuted –

(A) under this Article, or

(B) before the commencement of the Income Tax (Amendment No. 44) (Jersey) Law 201-[6], under any of the previous trivial pension commutation provisions.

(2) For the purposes of paragraph (1)(c)(ii)(B), the 'previous trivial pension commutation provisions' are –

(a) Article 5(2D) of the Income Tax (Superannuation Funds) (Jersey) Order 1972[7];

(b) Article 131B(3)(f); and

(c) Article 131CA(4)(g),

as they were in force before the commencement of the Income Tax (Amendment No. 44) (Jersey) Law 201-[8].

131CF Permitted commutation - thirty percent of net fund value

(1) An approved Jersey scheme may permit the pension holder to elect to commute, on one or more occasions, up to 30% of the net fund

value if, on the day the election is made, the pension holder has attained the age of 50 but has not attained the age of 75.

(2) In this Article, 'net fund value' means the fund value on the day the election is made less –

(a) for each relevant amount previously commuted from the scheme, the sum of A and B where –

(i) A is the amount commuted, multiplied by 7 and then divided by 3, and

(ii) B is so much of the increase or decrease in the fund value since the day the election was made to commute the amount, as is attributable to A; and

(b) for each relevant amount previously transferred into the scheme, the sum of C and D where –

(i) C is the amount transferred into the scheme, and

(ii) D is so much of the increase or decrease in the fund value, since the day the amount was transferred into the scheme, as is attributable to C.

(3) In paragraph (2)(a), 'relevant amount previously commuted' means an amount previously commuted –

(a) under this Article; or

(b) before the commencement of the Income Tax (Amendment No. 44) (Jersey) Law 201-[9], under any of the previous commutation provisions.

(4) In paragraph (2)(b), 'relevant amount previously transferred into the scheme' means an amount transferred into the scheme –

(a) from an approved Jersey scheme, if the pension holder, before or at the time of the transfer, commuted, under this Article, part of his her fund from which the transfer is made;

(b) before the commencement of the Income Tax (Amendment No. 44) (Jersey) Law 201-, if the pension holder, before or at the time of the transfer, commuted, under any of the previous commutation provisions, part of the fund from which the transfer is made; or

(c) from an equivalent scheme, as permitted by Article 131CG(5), if the pension holder has, before or at the time of the transfer, commuted part of his or fund in the equivalent scheme without any liability to tax being incurred on the amount commuted.

(5) For the purposes of paragraphs (2), (3) and (4), the 'previous commutation provisions' are –

(a) Article 5(2A) and (2B) of the Income Tax (Superannuation Fund) (Jersey) Order 1972[10];

(b) Article 131B(3)(d); and

(c) Article 131CA(3)(d),

as they were in force before the commencement of the Income Tax (Amendment No. 44) (Jersey) Law 201-[11].

131CG Permitted transfers from and to approved Jersey schemes and to approved drawdown contracts

(1) An approved Jersey scheme may only permit the pension holder or, following the pension holder's death, his or her dependant, to elect to transfer the whole or part of the fund value to another scheme or contract as allowed by paragraph (2) or (4).

(2) An approved Jersey scheme may permit the pension holder or, following the pension holder's death, his or her dependant, to elect to transfer –

(a) the whole of the fund value or, subject to the prior written approval of the Comptroller, part of the fund value, to another approved Jersey scheme; or

(b) subject to paragraph (3), the whole of the fund value to an approved drawdown contract.

(3) The pension holder or, following the pension holder's death, his or her dependant, cannot transfer the fund value from an approved Jersey scheme to an approved drawdown contract before the first day on which the payment of pension income could have commenced out of the approved Jersey scheme.

(4) An approved Jersey scheme may, subject to the prior written approval of the Comptroller, permit –

(a) the pension holder, at any time when he or she is not resident in Jersey; or

(b) following the pension holder's death, his or her dependant, at any time when the dependant is not resident in Jersey,

to elect to transfer the whole of the fund value to an equivalent scheme established outside Jersey.

(5) An approved Jersey scheme may permit the pension holder or, following the pension holder's death, his or her dependant, to elect to transfer into the approved Jersey scheme the whole of the fund value from an equivalent scheme established outside Jersey.

(6) The scheme manager of an approved Jersey scheme must notify the Comptroller, in writing, of the date of a transfer received in accordance with paragraph (5), the amount of the transfer, the name of the scheme from which it was transferred and the jurisdiction in which that scheme is established.

(7) For the purposes of this Article, a scheme established outside Jersey is an equivalent scheme if the Comptroller agrees that it is an equivalent scheme.

(8) The Comptroller may agree that a scheme established outside Jersey is an equivalent scheme if, in the Comptroller's opinion, the

scheme has characteristics which are consistent with the characteristics of an approved Jersey scheme.

Approved drawdown contracts and approved trusts

131D Approved drawdown contract

(1) A contract shall be approved as a drawdown contract if it complies with this Article.

(2) The manager must certify to the satisfaction of the Comptroller that, on the day the contract is to be made, the individual will be entitled to minimum retirement income.

(3) The manager must show to the satisfaction of the Comptroller that the contract –

(a) prohibits the transfer to the contract of funds other than the individual's fund value in an approved Jersey scheme and funds to which Article 131E(4)(e) applies;

(b) where, on the day the contract is to be made, the individual will not otherwise be entitled to minimum retirement income, requires the manager to –

(i) purchase from an authorized insurance company which is unconnected with the individual a lifetime annuity payable to the individual which is sufficient to secure that, on that day, the individual is entitled to minimum retirement income, or

(ii) subject to the requirements of Article 131E, transfer sufficient funds to a trustee for the establishment of an approved trust;

(c) requires the manager to invest the remaining funds, after any such purchase or transfer, in –

(i) cash deposits with any bank, building society or other institution carrying on deposit-taking business in the jurisdiction in which it is authorized to carry on such business,

(ii) securities or financial instruments traded on a recognized stock exchange,

(iii) units in collective investment funds within the meaning of the Collective Investment Funds (Jersey) Law 1988[12], or

(iv) investments falling within paragraph 9 of Schedule 1 to the Financial Services (Jersey) Law 1998[13] (long term insurance contracts);

(d) prohibits any payments to any person other than the individual or the individual's personal representative, apart from –

(i) sums applied in the purchase, from an authorized insurance company which is unconnected with the individual, of a lifetime annuity payable to the individual or, on the individual's death, to a dependant of the individual, or

(ii) fees and commission properly incurred in the administration of the contract and tax accounted for to the Comptroller;

(e) requires the manager to pay to the individual such sums from the funds invested and any income accrued on them as the individual requires;

(f) where, on the death of the individual, there remain any funds invested or income accrued on them, requires the manager, within the period of 3 months following the date of death, to pay to the individual's personal representative those funds and all such income; and

(g) requires the manager to deliver to the Comptroller, within the period of 3 months following the end of a year of assessment, or within the period of 6 months following the date of death of the individual, a statement showing –

(i) the funds invested at the beginning of that year or, for the year in which the contract commences, the funds invested at the commencement of the contract,

(ii) monies received during that year,

(iii) monies paid out during that year, whether to the individual, in fees and commission, as tax accounted for to the Comptroller or in any other manner, and

(iv) the funds invested at the end of that year or at the date of death of the individual, as the case may be, and the manner of the investment of those funds.

(4) The manager must be –

(a) resident in Jersey;

(b) unconnected with the individual; and

(c) either –

(i) the holder of a permit under the Collective Investment Funds (Jersey) Law 1988[14],

(ii) registered under the Banking Business (Jersey) Law 1991[15] or under the Investors (Prevention of Fraud) (Jersey) Law 1967[16],

(iii) the holder of a permit under the Insurance Business (Jersey) Law 1996[17], or

(iv) registered under the Financial Services (Jersey) Law 1998[18].

(5) The contract may only be assigned from one manager to another –

(a) with the consent of the individual and the prior written approval of the Comptroller; and

(b) subject to any conditions the Comptroller thinks proper to impose.

(6) The contract and the manager must comply with –

(a) any prescribed conditions and requirements; and

(b) any additional conditions and requirements imposed in its case by the Comptroller.

131E Approved trust

(1) A trust shall be approved if it complies with this Article.

(2) The trust must be established, and the approved drawdown contract to which it relates made, before the individual attains pensionable age.

(3) The manager of the approved drawdown contract and the trustee of the trust must certify, to the satisfaction of the Comptroller –

(a) that, disregarding the investments to be made pursuant to paragraph (4)(a), the individual will be entitled to minimum retirement income on the relevant day, being a day selected for the purposes of this Article and which is no later than the day on which the individual attains pensionable age; and

(b) that, when the contract is made, the manager shall forthwith transfer to the trustee at least sufficient funds for the purpose described in paragraph (4)(a).

(4) The trustee must show, to the satisfaction of the Comptroller, that the trust –

(a) requires the trustee to –

(i) purchase sufficient securities issued by the Government of the United Kingdom yielding an income having an actuarial equivalent, determined in the prescribed manner, as will secure that, on the day the trust is established, the individual is entitled to an income which, taking the actuarial equivalent of the income from those securities into consideration and disregarding the fact that the income from them ceases on or after the relevant day, is minimum retirement income,

(ii) hold the securities so purchased upon trust for the individual until the relevant day, and

(iii) receive the income from the securities and pay it to the individual;

(b) prohibits any payments out of the trust to any person other than the individual or his or her personal representative, apart from tax accounted for to the Comptroller;

(c) prohibits any payment out of the trust to the individual other than income accrued on the funds invested by the trustee;

(d) on the relevant day, requires the trustee to certify, to the satisfaction of the Comptroller, whether or not, on that day, the individual is entitled to minimum retirement income;

(e) where, on the relevant day, the individual is entitled to minimum retirement income, provides that the funds may be withdrawn for the purpose only of –

(i) their transfer to an approved drawdown contract, or

(ii) the purchase from an authorized insurance company which is unconnected with the individual of a lifetime annuity payable to the individual;

(f) where, on the relevant day, the individual is not entitled to minimum retirement income, provides that the trust shall continue, upon the same terms, for the life of the individual save that the trustee shall be required –

(i) to purchase from an authorized insurance company which is unconnected with the individual a lifetime annuity payable to the individual or purchase securities issued by the Government of the United Kingdom or convert the securities previously purchased, so as to secure that, on the relevant day, the individual is entitled to minimum retirement income,

(ii) to hold the securities (if any) for the life of the individual, and

(iii) where securities are held, to pay to the individual the income arising from them;

(g) where, on the death of the individual, there remain any funds invested or income accrued on them, requires the trustee, within the period of 3 months following the date of death, to pay to the individual's personal representative those funds and all such income; and

(h) requires the trustee to deliver to the Comptroller, within the period of 3 months following the end of a year of assessment, or within the period of 6 months following the date of death of the individual, a statement showing –

(i) the funds invested at the beginning of that year or, for the year in which the trust is established, the funds invested on the establishment of the trust,

(ii) monies received during that year,

(iii) monies paid out during that year, whether to the individual or as tax accounted for to the Comptroller, and

(iv) the funds invested at the end of that year or at the date of death of the individual, as the case may be, and the manner of the investment of those funds.

(5) The trustee must be –

(a) resident in Jersey;

(b) unconnected with the individual; and

(c) registered under the Financial Services (Jersey) Law 1998[19].

(6) The trust and the trustee must comply with –

(a) any prescribed conditions and requirements; and

(b) any additional conditions and requirements imposed in its case by the Comptroller.

131F Minimum retirement income

(1) An individual's entitlement to minimum retirement income shall be determined in accordance with this Article.

(2) An individual is entitled to minimum retirement income if, on the day for which the entitlement is to be determined, the individual is in receipt of relevant income which is not less than the amount of the old age pension specified in paragraph 3(1) of Part 1A of Schedule 1 to the Social Security (Jersey) Law 1974[20].

(3) In this Article, 'relevant income' means any one or more of the following –

(a) the amount of the old age pension payable to the individual in accordance with Article 25 of the Social Security (Jersey) Law 1974.

(b) an old age pension payable by another government, other than a pension for which the income is fixed for the life of the individual;

(c) any income not falling within sub-paragraph (a) or (b) which –

(i) shall be paid for the remainder of the life of the individual, and

(ii) is guaranteed to increase by not less than 3% per annum; and

(d) the actuarial equivalent of any income not falling within sub-paragraphs (a) to (c) which shall be paid for the remainder of the life of the individual.

(4) The actuarial equivalent of any income shall be determined in the prescribed manner.

Taxation relating to pensions, etc.

131G Taxation of approved Jersey schemes, drawdown contracts and trusts

The following income shall be exempt from income tax –

(a) income derived from the investments and deposits of –

(i) an approved Jersey occupational pension scheme,

(ii) an approved Jersey retirement trust scheme,

(iii) an approved drawdown contract,

(iv) an approved trust;

(b) income derived from the investments and deposits of an annuity fund created by an approved Jersey retirement annuity contract.

131H Allowance for contributions to approved Jersey occupational pension scheme by employer

(1) Ordinary annual contributions paid by an employer into an approved Jersey occupational pension scheme in a year of assessment shall be allowed to be deducted as an expense incurred in that year, when computing profits or gains for that year under –

(a) Schedule A, to the extent that tax is charged under Article 51(1)(b) or (c); or

(b) Case I or Case II of Schedule D.

(2) For the purposes of paragraph (1), ‘ordinary annual contribution’, in relation to a scheme, means an annual contribution of a fixed amount or an annual contribution calculated on some definite basis by reference to the earnings, contributions or numbers of members of the scheme.

(3) Contributions paid by an employer into an approved Jersey occupational pension scheme that are not ordinary annual contributions shall be treated, as the Comptroller may direct –

(a) as an expense incurred in the year in which the sum is paid; or

(b) as an expense to be spread over such period of years as the Comptroller thinks proper.

131I Allowance for contributions paid to approved Jersey schemes by pension holder

(1) Subject to paragraph (2), a pension holder’s approved pension contributions paid in a year of assessment shall be deducted from the pension holder’s relevant earnings as an expense for the year of assessment.

(2) The amount of a pension holder’s approved pension contributions which is allowed to be deducted by the pension holder as an expense for a year of assessment shall not exceed whichever is the lesser of –

(a) £50,000, less the pension holder’s excess income, if any; and

(b) the pension holder’s relevant earnings in the year of assessment, less the pension holder’s excess income, if any.

(3) In this Article –

‘approved pension contributions’ means a pension holder’s contributions –

(a) to approved Jersey occupational pension schemes;

(b) under approved Jersey retirement annuity contracts; and

(c) to approved Jersey retirement trust schemes;

‘excess income’ means the amount by which a pension holder’s income for a year of assessment exceeds £150,000;

‘income’ means the pension holder’s total income for a year of assessment, before the deduction of any of the following paid by the pension holder in the year of assessment –

(a) interest in respect of which the pension holder is entitled to a marginal income deduction under Article 90AA; and

(b) the pension holder’s total approved pension contributions (whether or not allowed as a deduction under paragraph (2)).

131J Taxation relating to repayment of contributions made to approved Jersey schemes

(1) Where contributions to an approved Jersey occupational pension scheme, including interest on contributions, if any, are repaid to the employer, the amount so repaid shall be treated for the purposes of this Law as a receipt of the trade, profession or vocation carried on by the employer upon whichever is the earlier of –

(a) the repayment falling due; and

(b) the last day on which the trade, profession or vocation is carried on by the employer.

(2) Where contributions to an approved Jersey occupational pension scheme, including interest on contributions, if any, are repaid to the pension holder during his or her lifetime as permitted by Article 131(12) –

(a) income tax shall be charged, at the rate of 10%, under Case VI of Schedule D, on the scheme manager in respect of the amount so repaid; and

(b) the scheme manager shall deduct the income tax charged from the amount repaid to the pension holder.

(3) Where a repayment of contributions, including any interest on contributions, is made to a pension holder from an approved Jersey occupational scheme, as described in paragraph (2) –

(a) the amount repaid, after deduction of tax, shall not be treated as income of the pension holder for any other purpose of this Law; and

(b) the pension holder shall not be entitled to any deduction, allowance or relief under this Law in respect of the income tax charged on and deducted by the scheme manager from the amount repaid.

131K Taxation of pension income paid from approved Jersey scheme

(1) For the purposes of this Law, the following payments shall be treated as the recipient’s earned income –

(a) an income for life paid out of an approved Jersey occupational pension scheme to the member or his or her dependant;

(b) an annuity paid under an approved Jersey retirement annuity contract to the individual who made the contract or his or her dependant;

(c) an annuity equivalent paid under an approved Jersey retirement trust scheme to a primary beneficiary or secondary beneficiary.

(2) A scheme manager, when making a payment referred to in paragraph (1), shall –

(a) subject to paragraph (3), deduct income tax at the standard rate; and

(b) deliver to the Comptroller an account of the payment and the tax deducted from it.

(3) The Comptroller may direct that income tax is deducted from a payment referred to in paragraph (1) at a rate that is less than the standard rate.

(4) Paragraph (1)(a) does not affect the generality of sub-paragraph (a) of the definition 'earned income' in Article 3(1).

131L Taxation of lump sum paid from approved Jersey scheme to pension holder or dependant

(1) Subject to paragraphs (3) and (4), income tax shall be charged under Case VI of Schedule D, at the rate of 10%, on a scheme manager of an approved Jersey scheme where a lump sum is paid in commutation of or in lieu of pension income under the scheme to –

(a) the pension holder, during his or her lifetime; or

(b) following the death of the pension holder, the pension holder's estate or any person.

(2) The scheme manager must deduct the tax before paying the lump sum.

(3) The following payments to a pension holder from an approved Jersey scheme shall be exempt from income tax –

(a) lump sums commuted by the pension holder as permitted by Article 131CD, if the election is made before the commencement of benefits;

(b) 30% of lump sums commuted by the pension holder, as permitted by Article 131CE: and

(c) lump sums commuted by the pension holder as permitted by Article 131CF.

(4) Where the pension holder in an approved Jersey scheme dies before the commencement of benefits, lump sums commuted as

permitted by Article 131(9)(b), 131B(7)(b) or 131CA(6)(b) shall be exempt from income tax.

(5) Where a lump sum is taxed or exempt from tax in accordance with this Article –

(a) the amount paid, after deduction of tax (if any), shall not be treated as income of the recipient for any other purpose of this Law; and

(b) the recipient shall not be entitled to any deduction, allowance or relief under this Law in respect of the income tax (if any) charged on and deducted by the scheme manager from the amount paid.

131M Taxation of sums paid from approved drawdown contracts and approved trusts

(1) A scheme manager of an approved drawdown contract or approved trust, when paying any sum that is charged to tax under Case VII of Schedule D to an individual or an individual’s personal representative, shall –

(a) deduct income tax at the standard rate; and

(b) deliver to the Comptroller an account of the payment and the tax deducted from it.

(2) For the purposes of this Law, any sum referred to in paragraph (1) that is paid to an individual (other than an individual to whom it is paid in his or her capacity as a personal representative) shall be treated as the earned income of the individual.

131N Exemption from tax for transfer from approved Jersey scheme to equivalent scheme

A transfer of the fund value of a pension holder in an approved Jersey scheme to an equivalent scheme established outside Jersey, as permitted by Article 131CG(4), shall be exempt from income tax.

131O Taxation of approved overseas schemes

(1) Pension income or a lump sum paid –

(a) from an occupational pension scheme for overseas employees approved under Article 131A or a retirement annuity contract for an overseas resident approved under Article 131C;

(b) to a person who is not resident in Jersey,

shall be exempt from income tax.

(2) Income derived from the investments and deposits of an occupational pension scheme for overseas employees that is approved under Article 131A shall be exempt from income tax.

(3) Income derived from the investments and deposits of an annuity fund created by a retirement annuity contract for an overseas resident that is approved under Article 131C shall be exempt from income tax.

Withdrawal of approval and appeals

131P Withdrawal of approval

(1) The Comptroller may withdraw an approval under this Part if it appears to the Comptroller that the facts concerning the approved scheme, contract or trust, or its administration, do not warrant the continuance of approval.

(2) The Comptroller may withdraw an approval under this Part in part if and to the extent that it appears to the Comptroller that the facts concerning the approved scheme, contract or trust, or its administration, do not warrant the continuance of approval.

(3) The Comptroller shall give written notice of the withdrawal of approval, the grounds for withdrawal and the date on which the withdrawal takes effect to –

(a) the scheme manager and any person connected with the scheme manager;

(b) any person whose acts or omissions are a reason for the withdrawal;

(c) any person who has benefitted from the acts or omissions which are a reason for the withdrawal; or

(d) any person connected with a person mentioned in sub-paragraph (c).

(4) Where the Comptroller gives a notice under paragraph (3) to a person other than the scheme manager, the Comptroller shall inform the scheme manager that the notice has been given.

(5) A withdrawal of approval may take effect on a day that is earlier than the day the notice is given under paragraph (3), but shall not be earlier than the day on which the grounds for withdrawal appear to the Comptroller to have arisen.

(6) Upon the withdrawal of approval taking effect, a person given notice under paragraph (3) shall be liable to income tax under Schedule D Case VI at the rate of 50% on an amount equal to whichever, on the day on which the withdrawal takes effect, is the greater of –

(a) the market value of the assets held for the purposes of the scheme, contract or trust; or

(b) the aggregate of –

(i) contributions to the scheme, contract or trust, including transfers from other schemes, contracts or trusts, and

(ii) income accrued from investments or deposits of the scheme, contract or trust.

(7) Where the Comptroller is unable to ascertain either or both of the amounts described in paragraph (6)(a) and (b), the Comptroller may, for the purposes of raising an assessment of the liability to tax under that paragraph, estimate the amount that he or she is unable to ascertain.

(8) The Comptroller may decide to abate the liability to tax under paragraph (6) by an amount which is, having regard to the relevant circumstances, just and reasonable.

(9) Where all or any of the tax charged under paragraph (6) remains unpaid –

(a) the Comptroller may give a further notice under paragraph (3) to any of the persons there mentioned who has not previously been given notice; and

(b) the person to whom the further notice is given shall be liable to so much of the tax charged under paragraph (6) as remains unpaid.

131Q Appeals against decisions of the Comptroller under this Part

(1) A person aggrieved by any decision of the Comptroller –

(a) to refuse to approve a scheme, contract or trust under this Part;

(b) to impose additional conditions or requirements on the approval of such a scheme, contract or trust;

(c) to withdraw the approval of such a scheme, contract or trust, whether wholly or in part;

(d) to refuse approval under Article 131(15);

(e) to refuse approval under Article 131CG (2)(a) or (4);

(f) to disagree, under Article 131CG(7), that a scheme is an equivalent scheme;

(g) to refuse approval under Article 131D(5)(a);

(h) to refuse to give a direction under Article 131K(3); or

(i) under Article 131P(8),

may appeal to the Commissioners.

(2) The following provisions of this Law shall apply, with the necessary modifications, to an appeal under paragraph (1) as they apply to an appeal against any assessment –

(a) Article 27;

(b) Article 28(1);

(c) Article 29, with the omission of paragraphs (4) and (5);

(d) Articles 29A, 35 and 36.

Miscellaneous

131R Order-making powers

(1) The Minister may by Order specify –

(a) information and particulars that must be delivered to the Comptroller by an applicant for any approval under this Part;

(b) the manner in which an application for any approval under this Part must be made;

(c) the process for the grant or refusal of any approval under this Part;

(d) information and particulars that must be delivered to the Comptroller by any specified person where any claim for relief under this Part is made;

(e) information and particulars that must be delivered to the Comptroller by any specified person regarding the dates and amounts of any contributions and the persons by whom they were made; and

(f) the manner in which any claim for relief under this Part is to be made.

(2) The Minister may by Order require scheme managers to notify the Comptroller of the date and amount of any payment from any scheme, contract or trust approved under this Part and the person to whom the payment was made.

(3) The Minister may by Order prescribe any matter that shall or may be prescribed under this Part.”.

12 Schedule 2 amended

In paragraph 1 of Schedule 2 to the principal Law –

(a) at the beginning of the paragraph there shall be inserted the sub-paragraph number “(1)”;

(b) for clauses (a) and (aa) there shall be substituted the following clause –

“(a) subject to sub-paragraph (2), contributions to an approved Jersey scheme;”;

(c) after sub-paragraph (1) there shall be added the following sub-paragraphs –

“(2) Where contributions are made to one or more approved Jersey schemes by a company owned by the pension holder in those schemes, the amount of the contributions made by the company in a year of assessment that shall be left out of account shall not exceed 25% of so much of the pension holder’s relevant earnings as are received from the company in that year.

(3) For the purposes of this paragraph –

(a) a person owns a company if he or she –

(i) is a person who owns, or is deemed to own, more than 20% of the ordinary share capital of the company, or

(ii) is a person who is connected with a person described in sub-clause (i);

(b) whether or not a person is deemed to own shares shall be determined in accordance with Article 82A.

(4) Expressions used in this paragraph that are defined in Part 19 have the same meaning as in that Part.”.

13 Citation and commencement

This Law may be cited as the Income Tax (Amendment No. 44) (Jersey) Law 201- and shall come into force on 1st January 2015.

[1] *chapter 24.750*
[2] *chapter 26.900*
[3] *chapter 26.900*
[4] *chapter 16.650*
[5] *Law currently awaiting Privy Council sanction*
[6] *P.130/2014*
[7] *chapter 24.750.60*
[8] *P.130/2014*
[9] *P.130/2014*
[10] *chapter 24.750.60*
[11] *P.130/2014*
[12] *chapter 13.100*
[13] *chapter 13.225*
[14] *chapter 13.100*
[15] *chapter 13.075*
[16] *chapter 13.450*
[17] *chapter 13.425*
[18] *chapter 13.225*
[19] *chapter 13.225*
[20] *chapter 26.900*