

STATES OF JERSEY



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

Lodged au Greffe on 17th June 2010
by the Chief Minister

STATES GREFFE



Jersey

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

REPORT

On the 16th July 2009 the States ratified an Agreement for the exchange of information relating to tax matters (TIEA) between Jersey and the United Kingdom (P.96/2009). Associated with the TIEA was an Arrangement amending the 1952 Arrangement between Jersey and the United Kingdom for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. This amendment provides, among other things, that pensions and other similar remuneration paid to an individual who is resident of one of the territories shall be taxable only in that territory.

The Arrangement can mean significant savings in terms of tax paid for some Jersey residents, who could have been paying 40% tax on their pension and who may in future be subject to tax of 50%. The Arrangement means that, subject to a claim being made and accepted by the UK tax authorities, Jersey residents will be paying tax in Jersey, at a maximum rate of 20%, on their UK pension.

The Arrangement also affects residents in the United Kingdom who have been paying Jersey tax on their Jersey pension. Under the Arrangement UK residents will be able to apply to the Comptroller of Income Tax to stop having Jersey tax deducted from their Jersey pensions and only pay tax in the United Kingdom.

The other provisions of the Act are largely concerned to update the existing Arrangement.

The Act gives effect to an “Arrangement” rather than to an “Agreement” because it is an amendment to what was referred to as an Arrangement in 1952 (Double Taxation Relief (Arrangement with the United Kingdom) (Jersey) Act 1952).

The Act provides that Jersey and the UK will notify to the other Party the completion of the procedures required by its law for the bringing into force of the Arrangement. The Arrangement shall enter into force on the date of the later of these notifications and shall thereupon have effect.

Financial and manpower implications

There are no implications for the financial or manpower resources of the States arising from the adoption of the Act. There is expected, however, to be an estimated £2-3 million gain in tax revenues resulting from the adoption of the Act.

Explanatory Note

This Act would give effect to an Arrangement which amends the 1952 Arrangement between His Majesty's Government and the States of Jersey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Article 1 defines the "1952 Arrangement".

Article 2 gives effect to the Schedule, in which the amendments made by the Arrangement are set out.

Article 3 revokes the Double Taxation Relief (Arrangement with the United Kingdom) (Jersey) Act 1997. The Arrangement given effect by it (the "1997 Arrangement" would have amended the 1952 Arrangement. However, the 1997 Arrangement never, in fact, came into force as the procedures for its commencement, whilst completed in Jersey, were not completed in the United Kingdom. The amendments made by the 1997 Arrangement were concerned with the taxation of enterprises carrying on offshore exploration or exploitation of the sea-bed and sub-soil.

Article 4 provides for the citation of the Act. The Arrangement given effect by this Act has effect for the year of assessment following the year in which Jersey and the United Kingdom notify each other that they have put in place the necessary legislation to implement the Arrangement and ensuing years.

The Schedule reproduces the Arrangement that amends the 1952 Arrangement.

Paragraph 1 of the Arrangement provides for the interpretation of the expression "1952 Arrangement".

Paragraph 2 of the Arrangement adds definitions to the interpretation provision in the 1952 Arrangement. It defines the "taxation authority", for the purposes of the 1952 Arrangement as, in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs (the "Commissioners") and, in the case of Jersey, the Minister for Treasury and Resources (the "Minister") or his or her authorized representative.

Paragraph 3 of the Arrangement substitutes paragraph 4 of the 1952 Arrangement. Paragraph 4 is concerned with a situation where the management or control of 2 enterprises, one of which is in Jersey and the other in the United Kingdom, is linked. Paragraph 4 already provides that, where the relationship between the 2 enterprises is such that profits which would otherwise have accrued to one of them do not so accrue, the profits may nevertheless be taxed as if they had accrued to that enterprise. The amendment adds to that rule. In a case where, by virtue of that rule, profits are taxed as if they had accrued to an enterprise in the first territory, and the second territory also taxes those profits, as profits of the other enterprise that is located in the second territory, the second territory is to adjust the tax it charges on the other enterprise, to take account of the tax charged in the first territory on the enterprise located in the first territory.

Paragraph 4 of the arrangement inserts a new paragraph 5A in the 1952 Arrangement. The general rule in paragraph 5A is that pensions, irrespective of which of the 2 territories they arise in, are taxable only in the territory in which the recipient resides.

Paragraph 5 inserts a new paragraph 9B in the 1952 Arrangement. Paragraph 9B creates a procedure by which a resident of one of the territories who considers that he or she has not been taxed in accordance with the 1952 Agreement may present his or her case to the taxation authority (the Minister, if the person resides in Jersey). If the resident's objection is justified, and the Minister cannot resolve it unilaterally, the Minister must endeavour to resolve it by mutual agreement with the Commissioners. Paragraph 9B also imposes a duty on the Ministers and on the Commissioners to endeavour to resolve, by mutual agreement, any difficulties arising from, or not provided for in, the 1952 Agreement.

Paragraph 6 deletes paragraph 10(2) of the 1952 Agreement (which defines "taxation authorities") consequentially upon the application of the definition, for all the purposes of the 1952 Agreement, by paragraph 2.

Paragraph 7 is concerned with the processes required to bring the arrangement into force. The arrangement only takes effect when each territory has completed the formalities required by its own laws to give the arrangement effect.



Jersey

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

Made [date to be inserted]

Coming into force [date to be inserted]

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

1 Interpretation

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

2 Double taxation arrangement amended

It is declared that –

- (a) an arrangement, set out in the Schedule, has been made between Her Majesty’s Government and the States of Jersey further amending the 1952 Arrangement; and
- (b) it is expedient that the arrangement has effect.

3 Revocation

The Double Taxation Relief (Arrangement with the United Kingdom) (Jersey) Act 1997³ is revoked.

4 Citation and commencement

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

- (2) The arrangement set out in the Schedule shall have effect in accordance with its terms.

SCHEDULE

(Article 2(a))

ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE STATES OF JERSEY AMENDING THE 1952 ARRANGEMENT BETWEEN THE TWO GOVERNMENTS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Her Majesty's Government and the States of Jersey;

Desiring to strengthen their economic relationship and to improve the operation of the existing arrangement between the two governments for the avoidance of double taxation:

Have agreed as follows:

1. In this Arrangement the term "1952 Arrangement" means that Arrangement as amended by the 1994 Arrangement.
2. After paragraph 2(1)(j) of the 1952 Arrangement there shall be inserted the following:
 - (k) the term "taxation authority" means:
 - (i) in the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;
 - (ii) in Jersey, the Treasury and Resources Minister or his authorised representative."
3. Paragraph 4 of the 1952 Arrangement shall be deleted and replaced with the following:
 4.
 - (1) Where:
 - (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory:

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

- (2) Where one of the territories includes in the profits of an enterprise of that territory - and taxes accordingly - profits on which an enterprise of the other territory has been charged to tax in that other territory and the profits so included are profits which would have accrued to the enterprise of the first-mentioned territory if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other territory shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Arrangement and the taxation authorities of the territories shall if necessary consult each other.”
4. After paragraph 5 of the 1952 Arrangement there should be inserted the following paragraph:
- “5A. Subject to the provisions of paragraph 6, pensions and other similar remuneration paid to an individual who is a resident of one of the territories shall be taxable only in that territory.”
5. After paragraph 9A of the 1952 Arrangement there shall be inserted the following new paragraph:
- “9B.
- (1) Where a resident of one of the territories considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the taxation authority of the territory of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Arrangement or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.
- (2) The taxation authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the taxation authority of the other territory, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the territories, except such limitations as apply for the purposes of giving effect to such an agreement.
- (3) The taxation authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in the Arrangement.
- (4) The taxation authorities of the territories may communicate with each other directly for the purpose of reaching, an agreement in the sense of this paragraph.”

6. Paragraph 10(2) of the 1952 Arrangement shall be deleted.
7. Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of this Arrangement. This Arrangement shall enter into force on the date of the later of these notifications and shall thereupon have effect:
 - (a) in the United Kingdom:
 - (i) in respect of income tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which this Arrangement enters into force;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which this Arrangement enters into force;
 - (b) in Jersey: in respect of income tax, for any year of assessment beginning on or after 1st January in the calendar year next following that in which this Arrangement enters into force.

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- ¹ *chapter 24.750*
² *chapter 24.750.10*
³ *R&O.9121*