

STATES OF JERSEY



DRAFT TAXATION (EXCHANGE OF INFORMATION WITH THIRD COUNTRIES) (JERSEY) REGULATIONS 200

Lodged au Greffe on 11th December 2007
by the Chief Minister

STATES GREFFE



Jersey

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REPORT

P.192/2007 contains a statement of the purpose of, and the financial and manpower implications of, these Regulations.

Explanatory Note

The effect of these Regulations, if adopted, will be to enable the States of Jersey to fulfil its obligations to the Kingdom of the Netherlands (so far as legislation is necessary for that purpose) under an agreement into which they entered on 20th June 2007. The agreement relates to the exchange of information relating to taxes.

Regulation 1 is the interpretation provision. In particular it defines “third country” to mean a country or territory listed in the Schedule and “tax” to mean a tax listed in the Schedule.

The *Schedule* to these Regulations lists the Netherlands as a third country and six types of tax in the Netherlands. The intention is that as further agreements are signed similar to the one with the Netherlands the Schedule will be amended accordingly by further Regulations to add further countries or territories and taxes.

Regulation 2 gives the Comptroller of Income Tax power to require a taxpayer to produce documents and other information or evidence in the taxpayer’s possession relating to third country tax information.

The requirement must be given by a notice in writing. However, before making it, the Comptroller must allow the taxpayer a reasonable opportunity to provide the material sought.

Regulation 3 gives the Comptroller power to require other persons to provide documents about a taxpayer’s liability for a third country tax.

This requirement must be also made by notice in writing, and the Comptroller must first allow the person of whom it is made a reasonable opportunity to provide the material sought.

Regulation 4 requires that a time for compliance must be stipulated in a notice. This must be not less than 30 days.

Regulation 5 provides that a notice under Regulation 3 must name the taxpayer to whom it relates.

Regulation 6 gives the Comptroller power to make and retain copies and extracts of things produced in accordance with requirements made under Regulation 2 or 3.

Regulation 7 gives the Royal Court jurisdiction to compel a taxpayer to comply with a requirement under Regulation 2.

Regulation 8 gives the Royal Court jurisdiction to compel a person to comply with a requirement under Regulation 3.

Regulation 9 provides for information to be provided in electronic or magnetic form.

Regulation 10 provides that ordinarily a person is entitled to at least 14 days notice of any application to the Royal Court for an order under Regulation 7 or Regulation 8.

Regulation 11 provides for the protection of evidence pending an application for an order under Regulation 7 or Regulation 8.

Regulation 12 deals with warrants for the searching of premises and seizure of documents and evidence.

Regulation 13 deals with the disposition of seized documents and evidence.

Regulation 14 gives a taxpayer, and any other person who is required to produce documents or information about a taxpayer, a right of appeal to the Royal Court.

Regulation 15 creates offences. These include intentionally tampering with documents or evidence, and failing to comply with a requirement made by the Comptroller under the Regulations.

Regulation 16 deals with the criminal liability of parties to offences and of bodies corporate and limited liability partnerships.

Regulation 17 provides for the commencement of the Regulations. They will come into force on the seventh day after they are made.



Jersey

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Arrangement

Regulation

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SCHEDULE

LIST OF THIRD COUNTRIES AND TAXES



Jersey

DRAFT TAXATION (EXCHANGE OF INFORMATION WITH THIRD COUNTRIES) (JERSEY) REGULATIONS 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 2(1) of the Taxation (Implementation) (Jersey) Law 2004^[1] and paragraph 1.8.5 of the Strategic Plan 2006-2011 approved by the States on 28th June 2006 and following the decision of the States, taken on the day these Regulations are made, to adopt Projet 192 of 2007, have made the following Regulations –

1 Interpretation

- (1) In these Regulations, unless the context otherwise requires –
 - “information” means a fact, statement, document or record, in whatever form;
 - “possession” includes custody, and also includes control;
 - “relevant criminal offence” means an offence that is criminal by reason of the law of a third country that is designated as a criminal law, for which purpose it is immaterial whether it is contained in a tax law, in a criminal code or in any other law;
 - “tax” means any tax listed in the third column in the Schedule opposite the entry for a third country;
 - “tax information” means information that is foreseeably relevant to the administration and enforcement of the domestic laws of a third country, including information that is foreseeably relevant to –
 - (a) the determination, assessment, enforcement or collection of tax with respect to a person who is subject to that tax; or
 - (b) the investigation or prosecution of a criminal matter in relation to that person;
 - “taxpayer” means a person whose liability to pay tax is under examination or investigation in a third country;
 - “third country” means a country or territory that is listed in the first column of the Schedule, subject to the description, if any, opposite in the second column.
- (2) For the purposes of these Regulations, a person is resident in a third country if –
 - (a) that person is regarded as so resident under the laws of that country; or
 - (b) the person is a legal person, partnership, corporation, trust, estate, association or other entity, deriving its status as that entity from a law in force in the third country.
- (3) For the purposes of these Regulations, a person is resident in Jersey if the person is resident in Jersey for the purposes of the Income Tax (Jersey) Law 1961^[2].
- (4) In this Law, a reference to a person’s residential status is a reference to whether the person is resident

in a third country or in Jersey or in some other place.

- (5) In these Regulations, expressions that are also used in the Income Tax (Jersey) Law 1961 have the same respective meanings as in that Law, unless the context otherwise requires.

2 Provision of information by taxpayer

- (1) The Comptroller may require a taxpayer to provide to the Comptroller –
- (a) a document or record in the taxpayer's possession that contains or in the reasonable opinion of the Comptroller may contain tax information that is relevant to a liability to tax to which the person is subject or may be subject, or to the amount of any such liability;
 - (b) tax information within the taxpayer's knowledge or belief that the Comptroller reasonably requires as being relevant to any such liability, or to the amount of any such liability; and
 - (c) evidence within the taxpayer's possession that the Comptroller reasonably requires as being relevant to the taxpayer's residential status for the purposes of these Regulations.
- (2) A requirement under paragraph (1) shall be made by notice in writing.
- (3) Before giving a notice under this Regulation, the Comptroller shall allow the taxpayer a reasonable opportunity to provide to the Comptroller the document, record, tax information or evidence concerned.
- (4) When giving a notice under this Regulation, the Comptroller shall also give to the taxpayer a written summary of the Comptroller's reasons for the giving of the notice.
- (5) Paragraph (4) does not require the disclosure of information –
- (a) if its disclosure would identify or might identify a person who has provided information that the Comptroller takes into account in deciding whether to give the notice;
 - (b) if the Comptroller is satisfied that there are reasonable grounds for suspecting that the taxpayer has committed a relevant criminal offence; or
 - (c) if the Comptroller is satisfied that disclosure of information of that description would prejudice the assessment or collection of tax.
- (6) A notice under this Regulation does not oblige a taxpayer to provide –
- (a) a document or record;
 - (b) tax information; or
 - (c) evidence,
- relating to the conduct of a pending appeal by the taxpayer in respect of tax.
- (7) A taxpayer may comply with a notice to provide a document or record under this Regulation by providing a copy of it instead of the original, if the copy is in such form as the Comptroller may reasonably require.
- (8) However, if the taxpayer does provide a copy, the Comptroller may by notice in writing require the taxpayer to make the original available for inspection.

3 Provision by other persons of information about taxpayer

- (1) This Regulation applies if the Comptroller has reasonable grounds for believing –
- (a) that a taxpayer may have failed to comply, or may fail to comply, with a domestic law of a third country concerning tax; and
 - (b) that any such failure has led, is likely to have led or is likely to lead to serious prejudice to the proper assessment or collection of tax.
- (2) If this Regulation applies, the Comptroller may require any person other than the taxpayer to provide

- to the Comptroller a document or record in the person's possession that contains or in the reasonable opinion of the Comptroller may contain tax information that is relevant to –
- (a) a liability to tax to which the taxpayer is subject or may be subject;
 - (b) the amount of any such liability; or
 - (c) the taxpayer's residential status for the purposes of these Regulations.
- (3) A requirement under paragraph (2) shall be made by notice in writing.
 - (4) Before giving a notice under this Regulation, the Comptroller shall allow the person of whom the requirement is to be made a reasonable opportunity to provide to the Comptroller the document or record concerned.
 - (5) The Comptroller shall give to the taxpayer –
 - (a) a copy of the notice; and
 - (b) a written summary of the Comptroller's reasons for the giving of the notice.
 - (6) Paragraph (5) does not require the disclosure of information –
 - (a) if its disclosure would identify or might identify a person who has provided information that the Comptroller takes into account in deciding whether to give the notice;
 - (b) if the Comptroller is satisfied that there are reasonable grounds for suspecting that the taxpayer has committed a relevant criminal offence; or
 - (c) if the Comptroller is satisfied that disclosure of information of that description would prejudice the assessment or collection of tax.
 - (7) A person may comply with a notice to provide a document or record under this Regulation by providing a copy of it instead of the original, if the copy is in such form as the Comptroller may reasonably require.
 - (8) However, if the person does provide a copy, the Comptroller may by notice in writing require the person to make the original available for inspection.

4 Time for compliance with notices

- (1) A notice under Regulation 2 or Regulation 3 shall specify a time within which the person to whom it is given must comply with it.
- (2) The time to be specified shall be not less than 30 days, beginning on the date on which the notice is given to the person who is to comply with it.

5 Naming of taxpayer under Regulation 3

A notice under Regulation 3 shall name the taxpayer to whom it relates.

6 Copying of information

If a document, record, tax information or evidence is provided to the Comptroller in compliance with a requirement made by the Comptroller under Regulation 2 or Regulation 3, the Comptroller may make an retain a copy or extract of it.

7 Court order for provision of information by taxpayer

- (1) This Regulation applies if the Royal Court is satisfied, on the application of the Comptroller –
 - (a) that a taxpayer has failed to comply with a requirement made of that taxpayer under Regulation 2; or

- (b) that there are reasonable grounds for suspecting that a taxpayer will not comply with such a requirement.
- (2) If this Regulation applies, the Royal Court may make an order that the taxpayer must provide to the Comptroller, within such time as the order specifies –
 - (a) a document or record in the taxpayer’s possession that contains tax information that is relevant to a liability to tax to which the taxpayer is subject or may be subject, or to the amount of any such liability;
 - (b) tax information that the court specifies as being relevant to any such liability, or to the amount of any such liability; or
 - (c) evidence that the court specifies of the taxpayer’s residential status for the purposes of these Regulations.

8 Court order for delivery of document or record relating to taxpayer

- (1) This Regulation applies if the Royal Court is satisfied, on the application of the Comptroller, of both of the following matters –
 - (a) that a person of whom a requirement has been made under Regulation 3 appears to have possession of a document or record to which paragraph (2) of that Regulation refers; and
 - (b) that any of the circumstances in paragraph (2) of this Regulation applies.
- (2) The circumstances to which this paragraph refers are –
 - (a) that the person has failed to comply with the requirement under Regulation 3;
 - (b) that there are reasonable grounds for suspecting that the person will not comply with such a requirement; or
 - (c) that the taxpayer to whom the requirement relates or any of the class of taxpayers to whom it relates may have failed to comply, or may fail to comply, with any provision of a domestic law of the third country concerning tax, and that any such failure has led, is likely to have led or is likely to lead to serious prejudice to the proper assessment or collection of tax.
- (3) If this Regulation applies, the Royal Court may make an order that the person of whom the requirement has been made under Regulation 3 must provide the document or record to the Comptroller within such time as the order specifies.

9 Documents and records in electronic or magnetic form

If an order under Regulation 7 or Regulation 8 applies to a document or record in electronic or magnetic form, the order is to be taken to require the person to provide the information in the document or record in a form in which the information is visible and legible.

10 Notice of application for court order

A person is entitled –

- (a) to at least 14 days notice of the Comptroller’s intention to apply for an order against the person under Regulation 7 or Regulation 8; and
- (b) to appear and be heard at the hearing of the application,

unless the Royal Court is satisfied that compliance with this paragraph will seriously prejudice the investigation of a relevant criminal offence.

11 Protection of evidence

- (1) This Regulation applies –
 - (a) if the Comptroller has given a taxpayer a notice under Regulation 2 requiring the taxpayer to provide to the Comptroller any document, record, tax information or evidence;
 - (b) if the Comptroller has given a person a notice under Regulation 3 requiring the person to provide to the Comptroller any document or record;
 - (c) if the Comptroller has given a person notice of the Comptroller’s intention to apply for an order under either of Regulations 7 and 8.
- (2) The person shall not alter, conceal, destroy, or otherwise dispose of any document, record, information or evidence to which the notice or application relates.
- (3) This Regulation does not prohibit a person from altering, concealing, destroying or otherwise disposing of or disclosing anything –
 - (a) with the leave of the Court; or
 - (b) with the written permission of the Comptroller.
- (4) This Regulation does not prevent a person from altering, concealing, destroying or otherwise disposing of anything to which a requirement of a notice under Regulation 2 or Regulation 3 refer after the person has complied with the notice.
- (5) This Regulation does not prevent a person from altering, concealing, destroying or otherwise disposing of or disclosing anything to which an application under Regulation 7 or Regulation 8 relates –
 - (a) after the application has been dismissed or abandoned; or
 - (b) after the application has been determined and the order or orders (if any) that have been made under it have been complied with.

12 Search and seizure

- (1) On an application made by the Comptroller, the Bailiff may issue a warrant under this Regulation in respect of any premises if the Bailiff is satisfied that there are reasonable grounds for believing –
 - (a) that an offence under these Regulations has been or is about to be committed on the premises; or
 - (b) that there is or may be on the premises anything that a person may be required, by a notice given under Regulation 2 or Regulation 3, to provide to the Comptroller.
- (2) However, a warrant may not be issued under paragraph (1) in the circumstances to which subparagraph (b) of that paragraph refers unless the Bailiff is satisfied that there are reasonable grounds for believing that use of the procedure under Regulation 2 or Regulation 3 might seriously prejudice an investigation concerning tax.
- (3) A warrant that is issued under this Regulation shall remain in force for 14 days and then cease to have effect.
- (4) The warrant authorizes every designated tax officer to enter and search the premises, and for that purpose to take with him or her such other persons as are reasonably necessary.
- (5) On entering the premises under the authority of the warrant, the person executing it may seize and remove anything found there, if he or she has reasonable grounds to believe that it may be required as evidence for the purposes of proceedings under these Regulations.
- (6) The warrant does not authorize the seizure or removal of an item that is subject to legal privilege.
- (7) In this Regulation, “designated tax officer” means –
 - (a) the Comptroller; or
 - (b) each other officer who is designated in writing for the purposes of this Regulation by the

Comptroller.

- (8) No application shall be made under this Article without the consent of the Attorney General.

13 Procedure where items are removed

- (1) A person who removes anything from any premises under Regulation 12 shall, if requested to do so by a person described in paragraph (2) of this Regulation, provide that person with a record as to what has been removed.
- (2) The persons to whom this paragraph refers are –
 - (a) an occupier of the premises; or
 - (b) a person who had possession of the thing immediately before its removal.
- (3) The record shall be provided within a reasonable time.
- (4) If the thing removed is of such a nature –
 - (a) that a photograph or copy of it is sufficient for use as evidence in proceedings under these Regulations; or
 - (b) that a photograph or copy of it is sufficient for any forensic examination or investigation under these Regulations,

the thing removed may not be retained for longer than is necessary to establish that fact and to obtain the photograph or copy.

14 Appeals

- (1) The following persons have a right of appeal to the Royal Court under these Regulations –
 - (a) a taxpayer, against a requirement made of that taxpayer under Regulation 2(1);
 - (b) a person, against a requirement made of that person under Regulation 3(2);
 - (c) a taxpayer, against a requirement made of another person under Regulation 3(2) in relation to that taxpayer.
- (2) An appeal under this Article shall be brought within 21 days after the appellant is given notice in writing of the requirement to which the appeal relates, or within such further time as the Royal Court may allow.
- (3) The effect of the requirement to which the appeal relates shall be stayed pending its determination, unless the Royal Court orders otherwise.
- (4) On hearing the appeal, the Royal Court may confirm, vary or set aside the requirement to which the appeal relates, and may make such order as to the costs of the appeal as it thinks fit.

15 Offences

- (1) A person who intentionally and without reasonable excuse contravenes or attempts to contravene Regulation 11(2) is guilty of an offence and liable to a fine.
- (2) A person who intentionally and without reasonable excuse fails to comply with a requirement under any of Regulation 2, 3, 7 or 8 is guilty of an offence and liable to a fine.
- (3) A person who intentionally and without reasonable excuse obstructs or attempts to obstruct a person who is executing a warrant under Regulation 12 is guilty of an offence and liable to imprisonment for 12 months and a fine.

16 Parties to offences

- (1) A person who aids, abets, counsels or procures the commission of an offence under these Regulations is also guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (2) If an offence under these Regulations by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership or director, manager, secretary or other similar officer of the body corporate;
 - (b) a person purporting to act in any such capacity,the person is guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) If the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

17 Citation and commencement

- (1) These Regulations may be cited as the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 200-.
- (2) These Regulations come into force on the seventh day after they are made.

SCHEDULE

(Article 1)

LIST OF THIRD COUNTRIES AND TAXES

Country or territory	Description	Tax
Netherlands	The part of the Kingdom of the Netherlands that is situated in Europe, including its territorial seas and any area beyond the territorial seas within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights	<p>(a) Income tax (Inkomstenbelasting)</p> <p>(b) Wages tax (Loonbelasting)</p> <p>(c) Company tax, including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act (Venootschapsbelasting, daaronder begrepen het aandeel van de Regering in de netto-winsten behaald met de exploitatie van natuurlijke rijkdommen geheven krachtens de Mijnbouwwet)</p> <p>(d) Dividend tax (Dividendbelasting)</p> <p>(e) Gift tax (Schenkingsrecht)</p> <p>(f) Inheritance tax (Successierecht)</p>

[1]

chapter 17.850

[2]

chapter 24.750