

STATES OF JERSEY



DRAFT INCOME TAX (AMENDMENT No. 36) (JERSEY) LAW 201-

**Lodged au Greffe on 27th August 2010
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT INCOME TAX (AMENDMENT No. 36) (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. 36) (Jersey) Law 201- are compatible with the Convention Rights.

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

REPORT

The Draft Income Tax (Amendment No. 36) (Jersey) Law 201- proposes to introduce a regime to exempt funds, their subsidiary investment holding companies and securitisation vehicles from income tax. This is designed to bring Jersey's tax law clearly into line with other jurisdictions such as Guernsey.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this Draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 26th August 2010 the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Treasury and Resources the provisions of the Draft Income Tax (Amendment No. 36) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This Law amends the Income Tax (Jersey) Law 1961 (“principal Law”). Broadly, the amendments allow persons issuing units or securities in eligible investment schemes to register with the Comptroller of Income Tax (“Comptroller”) in order to be exempt from income tax chargeable under Schedule D. The exemption applies to a registered person for a year of assessment provided that no trade is carried on by the person through a permanent establishment in Jersey during that year whilst the person is registered.

Article 1 defines the principal Law.

Articles 2 and 3 insert the definitions “eligible investment scheme” and “eligible participant” into the principal Law.

An “eligible investment scheme” is based on the definition of “collective investment fund” in the Collective Investment Funds (Jersey) Law 1988 but goes wider. In particular, the definition is not confined to collective investment schemes making offers to the public and includes schemes for the securitization or repackaging of securities or such other capital market transactions as the Comptroller may from time to time approve.

An “eligible participant” is defined to mean, broadly, a body issuing units or securities in an eligible investment scheme or any person in whom such a body has a majority economic interest. An eligible participant may include companies, general partners, trustees and limited liability partnerships. A “majority economic interest” in a person is defined to mean direct or indirect entitlement to more than 50% of the annual income, profits or gains arising or accruing to the person.

For the purpose of calculating a majority economic interest in the case of a body corporate with a share capital, a person entitled to a percentage of a distribution made by such a body corporate is deemed to be entitled to the same percentage of such annual income, profits or gains arising or accruing to the company.

Where a person’s entitlement arises through, or partly through, another body (whether or not a body corporate), the methods set out relating to subsidiaries in Article 3AB of the principal Law are used to determine the amount of entitlement, with the necessary adaptations.

Articles 4 to 11 make changes to the principal Law consequential upon the insertion by Article 12 of the provisions exempting registered eligible participants from Schedule D income tax.

Article 4 amends Article 20B of the principal Law so that a registered person who is exempt from Schedule D income tax is not required to send a company return to the Comptroller.

Articles 5 to 10 amend the principal Law so that the deemed dividend provisions apply to a person who is exempt from Schedule D income tax, other than a person who is a company subject to full attribution or a collective investment fund. (“Collective investment fund” has a narrower definition in the principal Law than an “eligible investment scheme” and is currently already excluded from the deemed dividend provisions in the principal Law). The amendments mean that an individual resident in

Jersey owning more than 2% of the share capital of a company, such company being a registered person exempt from Schedule D income tax, is taxed on the company's deemed dividends.

Article 11 amends the principal Law so as to include a registered person who is exempt from Schedule D income tax within the definition "company subject to full attribution" if (a) it is a trading company (other than a company limited by guarantee) or a collective investment fund and (b) more than 25% of the company's income, profits or gains derive from payments by persons in return for the procurement of services supplied to the company by an individual owning shares in the company. (Such a company is often referred to as a "personal services" company.) Under the principal Law, an individual resident in Jersey who owns more than 2% of the ordinary share capital of a company subject to full attribution is taxed on his or her deemed portion of the company's relevant profits as if it were income accruing to the individual.

Article 12 inserts a provision into the principal Law to allow an eligible participant to apply to the Comptroller to be registered. An eligible participant is exempt from Schedule D income tax for a year of assessment whilst registered, provided that no trade is carried on in Jersey by the registered person through a permanent establishment whilst registered. An application to be registered must be made each year.

Article 13 amends the principal Law so as to exclude registered persons exempt from Schedule D income tax from the application of Article 123C. Companies to which Article 123C applies are charged to tax under Schedule D at 0%.

Article 14 provides that this Law has effect for the year of assessment 2010 and ensuing years.

Article 15 sets out the title of the Law.



Jersey

DRAFT INCOME TAX (AMENDMENT No. 36) (JERSEY) LAW 201-

Arrangement

Article

1	Interpretation	9
2	Article 3 amended	9
3	Articles 3AC and 3AD inserted	9
4	Article 20B amended.....	11
5	Article 81B amended.....	11
6	Article 81D amended	12
7	Article 81E amended.....	12
8	Article 81F amended	12
9	Article 81K amended	12
10	Article 81M amended.....	12
11	Article 85F amended	13
12	Article 118C inserted	14
13	Article 123C amended.....	15
14	Years of assessment for which this Law shall have effect	16
15	Citation.....	16



Jersey

DRAFT INCOME TAX (AMENDMENT No. 36) (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 1961¹.

2 Article 3 amended

In Article 3 of the principal Law after the definition “earned income” there shall be inserted the following definitions –

“ ‘eligible investment scheme’ shall be construed in accordance with Article 3AC;

‘eligible participant’ shall be construed in accordance with Article 3AD;”.

3 Articles 3AC and 3AD inserted

After Article 3AB of the principal Law there shall be inserted the following Articles –

“3AC Eligible investment scheme

- (1) For the purposes of this Law, an eligible investment scheme is any of the following –

- (a) a scheme or arrangement for the investment of money which has as its object, or one of its objects, the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange;
 - (b) a scheme which has been established for the principal purpose of –
 - (i) the securitization or repackaging of assets involving the issue of securities, or
 - (ii) such other capital market transaction or category of capital market transaction as the Comptroller may from time to time approve.
- (2) In this Article ‘unit’ means any material representation of the rights of participants with regard to the assets of an eligible investment scheme whether such rights are represented –
- (a) by securities issued by the eligible investment scheme;
 - (b) by the entry of names of participants in a register kept in relation to the eligible investment scheme; or
 - (c) by any other means.
- (3) The Minister may, by Order, amend this Article.

3AD Eligible participant

- (1) In this Article –
- (a) references to ownership are references to beneficial ownership;
 - (b) ‘limited liability partnership’ means a partnership established under the Limited Liability Partnerships (Jersey) Law 1997² or an equivalent partnership established under the law of any country or territory outside Jersey;
 - (c) ‘general partner’ and ‘limited partnership’ have the same meanings as in Article 76A(6); and
 - (d) ‘scheme’ means an eligible investment scheme.
- (2) For the purposes of this Law, an eligible participant is any of the following persons resident in Jersey –
- (a) a company issuing units or securities in a scheme;
 - (b) a company, such company being a general partner of a limited partnership issuing units or securities in a scheme;
 - (c) a trustee of a unit trust, such trustee issuing units or securities in a scheme;
 - (d) a limited liability partnership issuing units or securities in a scheme;
 - (e) any person in whom one or more other persons, such other persons being eligible participants pursuant to any of subparagraph (a), (b), (c) or (d), have a majority economic interest.

- (3) For the purposes of paragraph (2)(e) one or more persons ('first persons') have a majority economic interest in another person ('second person') if the first person is, or the first persons are in aggregate, entitled directly or indirectly, to more than 50% of the annual income, profits or gains howsoever arising or accruing to the second person (including any income, profits or gains following a winding up, dissolution or equivalent of the second person).
- (4) For the purposes of paragraph (3) –
- (a) in the case of a person owning shares in a body corporate who, by virtue of such ownership, is entitled to a percentage of any annual income, profits or gains distributed by the body corporate, that person shall be deemed to be entitled to the same percentage of the annual income, profits or gains arising or accruing to the body corporate;
 - (b) 'entitled directly or indirectly' means entitled, whether directly or through another person or persons or partly directly and partly through another person or persons; and
 - (c) the percentage of annual income, profits or gains to which a person is entitled, through another person or partly directly and partly through another person, shall be determined in accordance with Article 3AB(5) to (10) as if references in those paragraphs to –
 - (i) a body corporate were references to a person,
 - (ii) ownership of shares in a body corporate were references to entitlement, including deemed entitlement under paragraph (a), to the annual income, profits or gains arising or accruing to a person.
- (5) The Minister may, by Order, amend this Article.

4 Article 20B amended

In Article 20B(2) of the principal Law after the words "collective investment fund" there shall be added the word "or, if different, a registered person within the meaning of Article 118C, such person being exempt from income tax under Article 118C(9)".

5 Article 81B amended

In Article 81B(1) of the principal Law –

- (a) after the definition "Jersey trading company" there shall be inserted the following definition –
- “ 'registered person' means a company which is a registered person within the meaning of Article 118C, such person being exempt from income tax under Article 118C(9), and which is not –
 - (a) a company subject to full attribution; or
 - (b) a collective investment fund;”;

- (b) in the definition “relevant profits” there shall be added after sub-paragraph (b) the following sub-paragraph –

“(c) in relation to the financial period of a registered person, the balance of income, profits and gains on which the registered person would be charged under Schedule D at the rate of 0% if the registered person were not a registered person after –

- (i) the making of any deduction or the giving of any allowance or relief to which the registered person would be entitled under this Law if the person were not a registered person, and
- (ii) the deduction of any amount paid, before the last day of the following financial period, out of such income, profits and gains as a dividend on preference shares in the registered person.”.

6 Article 81D amended

In Article 81D of the principal Law –

- (a) in the heading after the words “Jersey trading companies” there shall be added the words “and registered persons”;
- (b) in paragraph (1) after the words “Jersey trading company” there shall be inserted the words “or a registered person”.

7 Article 81E amended

In Article 81E(2) of the principal Law after the words “Jersey trading company” there shall be inserted the words “or a registered person”.

8 Article 81F amended

In Article 81F(1) of the principal Law after the words “Jersey trading company” each time those words appear there shall be inserted the words “or a registered person”.

9 Article 81K amended

In the heading to Article 81K of the principal Law and in paragraph (1) of that Article after the words “Jersey trading company” there shall be inserted the words “or a registered person”.

10 Article 81M amended

In Article 81M of the principal Law after the words “Jersey trading company” each time those words appear there shall be inserted the words “or a registered person”.

11 Article 85F amended

In Article 85F of the principal Law –

(a) for paragraph (2) there shall be substituted the following paragraphs –

“(2) Subject to paragraph (2A), a company is a company subject to full attribution if it is –

- (a) a company to which Article 123C applies; or
- (b) a registered person within the meaning of Article 118C and exempt from income tax under Article 118C(9).

(2A) A company is not a company subject to full attribution if –

- (a) it is a trading company (other than a company limited by guarantee) or collective investment fund; and
- (b) less than 25% of the company’s income, profits or gains comprise payments made pursuant to agreements with other persons for the supply of the services of an individual who owns shares in the company, or of an individual who is a person connected with an individual who owns shares in the company, in circumstances in which, but for the agreement and the interposition of the company, the other person and the individual would be employer and employee.”;

(b) for paragraph (4) there shall be substituted the following paragraph –

“(4) For the purposes of paragraph (3), ‘relevant profits’ means –

- (a) in relation to a company described in paragraph (2)(a), the balance of the income, profits and gains on which the company is charged under Schedule D at the rate of 0% after –
 - (i) the making of any deduction or the giving of any allowance or relief to which the company is entitled under this Law, and
 - (ii) the deduction of any amount paid, before the last day of the following financial period, out of such income, profits or gains as a dividend on preference shares in the company;
- (b) in relation to a registered person described in paragraph (2)(b), the balance of income, profits and gains on which the registered person would be charged under Schedule D at the rate of 0% if the registered person were not a registered person after –
 - (i) the making of any deduction or the giving of any allowance or relief to which the registered person would be entitled under this Law if the person were not a registered person, and
 - (ii) the deduction of any amount paid, before the last day of the following financial period, out of such income, profits and gains as a dividend on preference shares in the registered person.”.

12 Article 118C inserted

After Article 118B of the principal Law there shall be inserted the following Article –

“118C Exemption of certain income, profits or gains of an eligible investment scheme

- (1) In this Article –
 - ‘applicant’ means an eligible participant who has made an application under paragraph (2);
 - ‘registered person’ means an eligible participant who has been registered by the Comptroller under paragraph (5) and who has not ceased to be so registered under paragraph (7).
- (2) An eligible participant, other than an eligible participant who has, at any time, ceased to be registered under paragraph (7), may apply to the Comptroller to be registered under paragraph (5).
- (3) Such application must be made –
 - (a) for the year of assessment 2010, not later than 31st March 2011; and
 - (b) for any other year of assessment in respect of which an eligible participant wishes to be a registered person, not later than –
 - (i) 30th June in the following year of assessment if the eligible participant has not previously made an application to be a registered person, or
 - (ii) if the eligible participant has previously made an application to be a registered person under this Article –
 - (A) 31st March in that year of assessment, or
 - (B) such later date as the Comptroller may allow in exceptional circumstances, such date being no later than 30th June in the following year of assessment.
- (4) An application shall –
 - (a) be in such form and include a statement of such information as the Comptroller may determine; and
 - (b) be accompanied by such fee as the Minister may prescribe by Order.
- (5) The Comptroller, shall, on receipt of an application that complies with this Article, register the applicant for the purposes of this Article.
- (6) If a person is registered under paragraph (5), the person shall become a registered person in the year of assessment in respect of which the application was made on –
 - (a) 1st January; or

- (b) the date the person became an eligible participant, whichever is later.
- (7) A person shall cease to be a registered person –
- (a) on 1st January in a year of assessment, if –
 - (i) the person does not make an application under this Article for that year of assessment, and
 - (ii) the person was a registered person in the immediately preceding year of assessment; or
 - (b) on the date on which a person ceases to be an eligible participant, whichever is the earlier date.
- (8) A registered person who ceases to be an eligible participant shall, as soon as practicable, give notice of that fact to the Comptroller.
- (9) A registered person shall be exempt from all income tax chargeable under Schedule D on the registered person during the period in which such a person is registered in respect of a year of assessment unless, during such period, any trade is carried on through a permanent establishment in Jersey by the registered person.
- (10) For the purposes of paragraph (9) ‘permanent establishment’ shall have the same meaning as in Article 3 as if that meaning applied to a registered person, whether or not a company.
- (11) A registered person shall, if required by the Comptroller, deliver to the Comptroller a list showing the names and addresses of each person residing in Jersey who –
- (a) owns shares in the registered person, if a company, and the number of shares owned by each such person; or
 - (b) has an economic interest in the registered person within the meaning of Article 3AD(2)(e), if the registered person is a trustee (other than a company) or limited liability partnership, and the amount of such economic interest.
- (12) For the purposes of paragraph (11) a person (‘first person’) shall be deemed to have an economic interest in another person if the first person is entitled to any of the annual income, profits or gains howsoever arising or accruing to the other person or would be so entitled in the event of a distribution.”.

13 Article 123C amended

For Article 123C(1)(b) there shall be substituted the following sub-paragraph –

- “(b) which is not any of the following –
 - (i) a company to which Article 123D applies,
 - (ii) a utility company, or

- (iii) a registered person within the meaning of Article 118C, such person being exempt from income tax under Article 118C(9).”.

14 Years of assessment for which this Law shall have effect

This Law shall have effect for the year of assessment 2010 and ensuing years.

15 Citation

This Law may be cited as the Income Tax (Amendment No. 36) (Jersey) Law 201-.

¹ *chapter 24.750*
² *chapter 13.475*