

# STATES OF JERSEY



## **DRAFT INCOME TAX (AMENDMENT No. 40) (JERSEY) LAW 201-**

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**Lodged au Greffe on 27th September 2011  
by the Minister for Treasury and Resources**

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**STATES GREFFE**





Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 40) (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. 40) (Jersey) Law 201- are compatible with the Convention Rights.

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

## **REPORT**

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This Draft Law gives effect to proposals described in the Draft Budget Statement 2012.

### **Financial and manpower implications**

The financial and manpower implications are clearly identified in Part 10 of the Draft Budget Statement 2012.

### **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 23rd September 2011 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. 40) (Jersey) Law 201- are compatible with the Convention Rights.

## Explanatory Note

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This Law amends the Income Tax (Jersey) Law 1961 (“the principal Law”).

*Part 1* is introductory.

*Article 1* is a definition Article.

*Part 2* relates to international business companies.

This Part repeals Article 123B, that is, the provision in the principal Law setting out rules for the taxation of international business companies.

*Articles 2 to 5 and 7* make changes consequential on the repeal. These include amendments to Articles 76B and 76C which were inserted into the principal Law by Income Tax (Amendment No. 35) (Jersey) Law 2011.

*Article 6* repeals Article 123B.

*Article 8* provides that this Part shall have effect for the year of assessment 2012 and ensuing years.

*Part 3* relates to child care relief.

*Article 9* amends the principal Law in two main respects. First, the type of child care in respect of which relief can be claimed for a qualifying child is extended. The principal Law already allows tax relief for child care with a day carer registered under the Day Care of Children (Jersey) Law 2002 or a nanny accredited by the Jersey Child Care Trust. The amending Law also allows relief to be claimed for fees paid to nursery schools or nursery classes, such fees being paid under Regulations made under Part 3 of the Education (Jersey) Law 1999 in respect of children below the compulsory school age (that is, broadly, under the age of 5).

Second, the amount of tax relief that can be claimed in respect of a qualifying child receiving such care as described above is increased. The amount that can be claimed for a year of assessment is increased to £12,000 from £6,150 in the case of a child who has not attained the age of 4 years and in the case of a child who has his or her 4th birthday between 1st September and 31st December inclusive. In the case of any other qualifying child, the amount remains at £6,150. The actual amount that can be claimed is the amount referable to the age of the child, the amount paid for child care or the claimant’s qualifying income, whichever is the lowest amount.

*Article 10* provides that this Part shall have effect for the year of assessment 2011 and ensuing years.

*Part 4* relates to payments on termination of employment.

*Article 11* amends the principal Law to require employers to deduct tax from payments made to the employer that fall within the new Article 62D inserted into the principal Law by Article 12.

*Article 12* amends the principal Law to make it clear that all payments received in consequence of the termination of employment or following a change in the duties or emoluments of employment are taxable under Schedule D, regardless of whether such payments are contractual, statutory or voluntary.

*Article 13* amends the principal Law so as to enable redundancy payments and other payments for loss of office or employment up to £50,000, to be exempt from income tax. So much of any payment that is made resulting from injury, death or disability is exempt from tax without limit.

*Article 14* provides that this Part shall have effect for the year of assessment 2012 and subsequent years.

*Part 5* relates to pensions.

*Article 15* inserts the definition “medical practitioner” into the principal Law to mean a person who is a registered medical practitioner under the law of Jersey or under the law of a country or territory outside Jersey. This is for the purpose of the provisions related to serious ill-health explained below.

*Article 16* amends the principal Law in respect of funds of schemes approved under Article 131 (broadly occupational pension schemes). It amends the principal Law by restricting the amount of pension contribution that can be deducted as an expense in the case of employed persons earning over £150,000 a year. The amount of contribution that can be deducted is limited to £1 for every £1 of contribution paid that is in excess of the amount of earned income over £150,000 subject to the overall limit of £50,000 in any year of assessment or the employed person’s related earnings during the year of assessment, whichever is the lower amount.

This Article also amends the principal Law by allowing the Comptroller to approve funds or schemes under Article 131 notwithstanding that the rules of the fund or scheme allow for the transfer of a sum representing the accrued rights of the employee to be transferred to the employee in circumstances specified by the Minister by Order.

*Article 17* amends the principal Law in respect of annuity contracts approved under Article 131B. The amendments make similar amendments to restrict the level of premiums paid under annuity contracts that can be deducted from relevant earnings as those amendments made by Article 16 in relation to pension contributions as described above.

This Article also amends the principal Law by specifying the circumstances in which an approved annuity contract may contain provisions allowing an individual to commute the whole of a fund in respect of which an annuity to the individual would be payable in the event of serious ill health. Under the existing provisions, the definition of serious ill health is left to be defined in the annuity contract. Under the new provisions, such a commutation can only be made when a registered medical practitioner has given evidence to the person having control of the fund that the individual is expected to live for less than one year.

*Article 18* makes similar amendments to those made by Article 16 in relation to retirement annuity trust schemes.

*Article 19* provides that this Part shall have effect for the year of assessment 2012 and ensuing years.

*Part 6* contains miscellaneous amendments.

*Article 20* amends the principal Law by inserting a provision that requires the Minister of Social Security to remit to the Comptroller of Taxes any income tax which the Minister is required under the Social Security (Jersey) Law 1974 to deduct from a component of a benefit payable under that Law. Social Security (Amendment No. 20)

(Jersey) Law 201- (adopted by the States on 9th June 2011 and currently awaiting sanction from the Privy Council) requires income tax to be deducted from components of insolvency benefit.

*Article 21* amends the principal Law so that the rules applicable to the taxation of partnerships carrying on trade chargeable under Schedule D case 1, such rules also being applicable to partnerships carrying on the trade of property development chargeable under Schedule A, are extended to cover incorporated limited partnerships and separate limited partnerships. This amendment is consequential on amendments made by Income Tax (Amendment No. 35) (Jersey) Law 2011 which inserted provisions relating to incorporated limited partnerships and separate limited partnerships into the principal Law.

*Article 22* provides that this Part shall have effect for the year of assessment 2012 and ensuing years.

*Part 7 – Deemed dividend – computation and tax allowance*

This Part makes further provision in respect of the repeal of the provisions of the principal Law that impose taxation of deemed dividends and taxation by full attribution of the profits of a company.

Under the Income Tax (Amendment No. 38) (Jersey) Law 201- (P.79/2011 adopted on 7th July 2011) there is no liability to tax on deemed dividends on profits accruing after 31st December 2011. Further, there is no liability for a final deemed dividend on an event occurring after that date. However, the Law has the effect that there will be a final liability, in the year of assessment 2012, for taxation of a deemed interim dividend on profits accruing to 31st December 2011.

The Income Tax (Amendment No. 38) (Jersey) Law 201- also provided that there is no liability to taxation by full attribution on profits accruing after 31st December 2011.

The interaction of the repeal of taxation of deemed dividends and taxation by full attribution creates scope for avoidance of an individual's tax liability on the profits of a Jersey trading company accruing to 31st December 2011 in a case where the individual owns his or her shares in a trading company through the medium of one or more interposed companies or other entities.

Whether or the extent to which an individual is liable to taxation of a deemed interim dividend is determined by whether or to what extent the profits of the trading company are distributed as relevant dividends. "Relevant dividends" are dividends actually paid out of the profits of a financial period within a specified time. So, if sufficient profits of a company are paid out as relevant dividends, there is no liability to a deemed interim dividend.

Without the amendment made by *Article 23*, below, relevant dividends would include dividends payable at any time up to the last day of the following financial period of the company or, if that day is not 31st December, up to 31st December next following. So, in determining an individual's liability to a deemed dividend in respect of profits accruing to 31st December 2011, dividends paid up to 31st December 2012 would be taken into consideration.

If the distribution of the profits as dividends paid after 31st December 2011 by a Jersey trading company to an interposed company continued to constitute the payment

of a relevant dividend, the individual who owns the shares in the Jersey trading company via the interposed company could avoid or defer liability for taxation on a deemed interim dividend. Distributing sufficient of the profits as relevant dividends results in there being no liability to a deemed interim dividend. But, because the relevant dividend is paid to the interposed company after 31st December 2011 rather than direct to the individual, the individual also avoids liability for taxation of the profits as received as a relevant dividend by the interposed company, because the dividend would be a profit accruing to the interposed company after the date when any liability of the individual for full attribution of the company's profits comes to an end.

*Article 23*, then, limits the relevant dividends that may be taken into account in determining an individual's liability to a deemed dividend, by excluding relevant dividends paid after 31st December 2011 from the definition "relevant dividend". So, in the case given above, if the profits are distributed to the interposed company in 2011, as relevant dividends, the individual is not liable to taxation of his or her share of profits of the trading company as a deemed interim dividend, but is liable, by full attribution, to taxation of the profits as income of the interposed company accruing in 2011. Alternatively, if the trading company does not distribute its profits as a relevant dividend paid to the interposed company in 2011, the individual is liable to taxation of those profits as a deemed interim dividend.

The amendment to the definition "relevant dividend" applies for all purposes of Case VIII of Schedule D. Therefore, it also has the effect that dividends paid after 31st December 2011 are not deducted from the relevant profits of a Jersey trading company or Jersey financial services company on which an individual's liability to a deemed final dividend is calculated. Liability to a deemed final dividend arises on the occurrence of an event, such as the sale of the individual's shares or the winding up of the company. There is no liability for a deemed final dividend in respect of an event occurring after 31st December 2011.

*Article 24* inserts paragraph 8A in Schedule 5A to the principal Law. Paragraph 8A applies where an individual is taxed on a deemed dividend in respect of shares in a company that he or she owns (as defined in Article 82A of the principal Law) via the medium of one or more interposed companies. It provides for a combination of tax credits and allowances in the calculation of tax on dividends or distributions actually paid, so as to ensure that there is no overpayment of tax on the profits from which they are derived.

Sub-paragraph (2) of paragraph 8A provides that if a dividend or distribution is, in whole or in part, a distribution of income that has already been taken into account in determining an individual's liability to tax on a deemed dividend of a trading or financial services company, the amount of that income, when paid as a dividend or distribution to a company through which the individual is deemed to own shares in the trading or financial services company, or by a company through which the individual is deemed to own shares in the trading or financial services company to another such company or the individual, is disregarded in determining the liability to tax of the recipient of the dividend or distribution.

Sub-paragraph (3) modifies the operation of Article 88 of the principal Law.

Article 88(2) allows a company or other entity that is taxed at 20% and which declares a dividend out of profits which have been taxed, to deduct tax at the rate of 20% when paying the dividend. Article 88(3) allows a company or other entity that is taxed at 10% and which declares a dividend out of profits which have been taxed, to deduct tax



at the rate of 10% when paying the dividend. Article 88(4) prevents a company taxed at 0% from deducting tax when paying a dividend. A recipient of a dividend from which tax has been deducted is taken to have received the gross amount of the dividend and is allowed a credit, in the amount deducted, against the recipient's liability to tax on the dividend.

Sub-paragraph (3) reduces the amount of tax that can be deducted from a dividend payment where the company or other entity is paying the dividend out of income on which, by virtue of the rule in sub-paragraph (2), it has paid a reduced amount of tax. In short, the reduction must be passed on to the recipient of the dividend.

*Part 8* is the closing provision.

*Article 25* sets out the title of the Law.





Jersey

## DRAFT INCOME TAX (AMENDMENT No. 40) (JERSEY) LAW 201-

### Arrangement

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Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 40) (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 –

### **PART 1**

#### **INTRODUCTORY**

##### **1 Interpretation**

In this Law, “principal Law” means the Income Tax (Jersey) Law 1961<sup>1</sup>.

### **PART 2**

#### **INTERNATIONAL BUSINESS COMPANIES**

##### **2 Article 3 amended**

In Article 3(1) of the principal Law in the appropriate alphabetical order there shall be inserted the following definition –

“ ‘international activities’ means business activities carried on outside Jersey;”.

**3 Article 76A amended**

In Article 76A of the principal Law –

- (a) in paragraph (4) the words “or is a company which, pursuant to Article 123B of this Law, has made application and been charged to tax as an international business company” shall be deleted;
- (b) in paragraph (6) the definition “international activities” shall be deleted.

**4 Article 76B amended**

In Article 76B of the principal Law –

- (a) in paragraph (6) the words “or is a company which, pursuant to Article 123B of this Law, has made application and been charged to tax as an international business company” shall be deleted;
- (b) in paragraph (8) the definition “international activities” shall be deleted.

**5 Article 76C amended**

In Article 76C of the principal Law –

- (a) in paragraph (6) the words “or is a company which, pursuant to Article 123B of this Law, has made application and been charged to tax as an international business company” shall be deleted;
- (b) in paragraph (8) the definition “international activities” shall be deleted.

**6 Article 123B repealed**

Article 123B of the principal Law shall be repealed.

**7 Article 123F amended**

In Article 123F(10) of the principal Law, for the definition “qualifying company” there shall be substituted the following definition –

“ ‘qualifying company’ means a company to which Article 123D applies.”.

**8 Years of assessment for which this Part has effect**

This Part shall have effect for the year of assessment 2012 and ensuing years.

## **PART 3**

### **CHILD CARE RELIEF**

**9 Article 92B amended**

In Article 92B of the principal Law –

- (a) for paragraph (1) there shall be substituted the following paragraph –
- “(1) The threshold applicable in the case of an eligible claimant shall be increased by –
- (a) the amount paid by the claimant –
    - (i) to a registered day carer or nanny accredited by the Jersey Child Care Trust for the care of a qualifying child, or
    - (ii) under Regulations made under Article 9 of the Education (Jersey) Law 1999<sup>2</sup> for the attendance of a qualifying child below compulsory school age in a nursery school or nursery class maintained by the Minister for Education, Sports and Culture under that Law;
  - (b) the claimant’s qualifying income;
  - (c) in the case of a qualifying child whose date of birth is between 1st January and 31st August inclusive and who, in a year of assessment has not attained the age of 4 years, £12,000;
  - (d) in the case of a qualifying child whose date of birth is between 1st September and 31st December inclusive and who, in a year of assessment –
    - (A) has not attained the age of 4 years, or
    - (B) has his or her 4th birthday,£12,000; or
  - (e) in the case of any other qualifying child, £6,150,
- whichever is the lowest, but no amount which qualifies for relief under any other provision of this Law shall be included.”;
- (b) for paragraph (3) there shall be substituted the following paragraph –
- “(3) No increase claimed under paragraph (1) shall be allowed unless the eligible claimant provides the Comptroller with a certificate from, as the case requires, the registered day carer, nanny, nursery school or primary school in which the nursery class is held showing, in respect of the year of assessment –
- (a) the name and address of the registered day carer, nanny, nursery school or primary school;
  - (b) in the case of a registered day carer, his or her registration number;
  - (c) in the case of a nanny, his or her reference number from the Jersey Child Care Trust;
  - (d) the full name and date of birth of the qualifying child; and
  - (e) the amount received for the care of the child.”.

## 10 Years of assessment for which this Part has effect

This Part shall have effect for the year of assessment 2011 and ensuing years.

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**PART 4****TERMINATION PAYMENTS****11 Article 41B amended**

In Article 41B(1) of the principal Law after the words “to an employee” there shall be added the words “, including any payments made by an employer that fall within Article 62D.”.

**12 Article 62D inserted**

After Article 62C of the principal Law there shall be inserted the following Article –

**“62D Application of Schedule D to termination and other payments**

- (1) Tax shall be charged under Case II of Schedule D in respect of any payment made by or on behalf of an employer to an employee in consequence of –
  - (a) the termination of the employee’s employment; or
  - (b) any change in the duties or emoluments of the employment, regardless of whether the payment arises from a contractual or statutory entitlement, an order by a court or tribunal or is voluntary on the part of the employer.
- (2) For the purposes of paragraph (1) –
  - (a) ‘employee’ refers to any person paid wages or salary by another person regardless of whether the first person is employed or is an office holder and ‘employer’ and ‘employment’ shall be construed accordingly; and
  - (b) the reference to payment made to an employee includes payment to an employee’s estate.”.

**13 Article 115A inserted**

After Article 115 of the principal Law there shall be inserted the following Article –

**“115A Exemption in respect of redundancy and other termination payments**

- (1) Subject to the provisions of this Article, exemption from income tax shall be granted in respect of any termination payment made to an employee by or on behalf of an employer.
- (2) In this Article ‘termination payment’ means any payment made to an employee in consequence of the termination of the employee’s office or employment, including any redundancy payment, compensation for unfair dismissal or loss of office, compensation



for injury, death or disability (whether or not any such payment is calculated on the basis of earnings), but disregarding any payment that falls within the description in paragraph (3).

- (3) For the purposes of paragraph (2) there shall be disregarded any payment that has the characteristics of remuneration or deferred pay under the terms and conditions governing the employment including bonuses, holiday pay, payment in lieu of notice, payments whilst suspended from duties, pension and other amounts of a like nature.
- (4) Subject to paragraph (5), a termination payment shall be exempt under paragraph (1) in respect of so much of the payment as does not exceed £50,000.
- (5) So much of a termination payment that is made as a consequence of injury, death or disability shall be exempt under paragraph (1) without limit.
- (6) For the purposes of determining whether a payment is a termination payment for the purposes of this Article it is irrelevant whether it is paid as a result of a contractual or statutory entitlement, an order by a court or tribunal or is voluntary on the part of the employer.
- (7) For the purposes of paragraph (1) –
  - (a) ‘employee’ refers to any person paid wages or salary by another person regardless of whether the first person is employed or is an office holder and ‘employer’ and ‘employment’ shall be construed accordingly; and
  - (b) the reference to payment made to an employee includes payment to an employee’s estate.”.

#### **14 Years of assessment for which this Part has effect**

This Part shall have effect for the year of assessment 2012 and ensuing years.

## **PART 5**

### **PENSIONS**

#### **15 Article 3 amended**

In Article 3(1) of the principal Law in the appropriate alphabetical order there shall be inserted the following definition –

“ ‘medical practitioner’ means a person who is a registered medical practitioner under the Medical Practitioners (Registration) (Jersey) Law 1960<sup>3</sup> or who is the equivalent of such a person under the law of a country or territory outside Jersey;”.

**16 Article 131 amended**

In Article 131 of the principal Law –

- (a) after paragraph (1)(ab) there shall be inserted the following sub-paragraph –
- “(ac) no deduction shall be allowed as an expense under this paragraph of a contribution paid in a year of assessment by an employed person whose income exceeds £150,000, unless the total contributions paid by the employed person in the year of assessment exceed the amount of the excess income (‘excess income’ being the amount of the employed person’s income less £150,000);”;
- (b) after paragraph (1) there shall be inserted the following paragraphs –
- “(1A) The amount that may be deducted in the circumstances described in paragraph (1)(ac) is £1 for every £1 by which the total contributions paid by the employed person in the year of assessment exceed the excess income.
- (1B) If an amount is deducted in the circumstances described in paragraph (1)(ac) no deduction shall be allowed under Article 131B(2B) and Article 131CA(2B).
- (1C) For the purposes of paragraph (1)(ac) and (1A) –
- (a) references to ‘income’ mean the employed person’s total income disregarding the aggregate of any of the following paid by the employed person in the year of assessment –
- (i) interest in respect of which the employed person is entitled to a marginal income deduction under Article 90AA,
- (ii) an ordinary annual contribution,
- (iii) a premium paid under an annuity contract as defined in Article 131B,
- (iv) a contribution to a retirement annuity trust scheme as defined in Article 131CA;
- (b) references to ‘total contributions’ mean the aggregate of any of the payments described in clauses (ii) to (iv) in sub-paragraph (a).”;
- (c) for paragraph (3)(iv) there shall be substituted the following clause –
- “(iv) notwithstanding that the rules of the fund or scheme provide for the transfer of a sum, representing the accrued rights of an employee, to –
- (A) another fund or scheme approved under this Article,
- (B) the annuity fund of an annuity contract as defined in Article 131B,
- (C) a retirement annuity trust scheme as defined in Article 131CA,
- (D) an approved drawdown contract, or

- (E) the employee in such circumstances as the Minister may specify by Order.”.

## 17 Article 131B amended

In Article 131B of the principal Law –

- (a) in paragraph (2) before the words “Any premium paid” there shall be inserted the words “Subject to paragraph (2A),”;
- (b) after paragraph (2) there shall be inserted the following paragraphs –
- “(2A) In the case of a premium paid in a year of assessment under an annuity contract by an individual whose income in that year exceeds £150,000, no deduction shall be made under paragraph (2) unless the total contributions paid by the individual in the year of assessment exceed the amount of the excess income (‘excess income’ being the amount of the individual’s income less £150,000).
- (2B) In the circumstances described in paragraph (2A), the amount that may be deducted under paragraph (2) is £1 for every £1 by which the total contributions paid by the individual in the year of assessment exceed the excess income.
- (2C) If a deduction is made in the circumstances described in paragraph (2A) no deduction shall be allowed under Article 131(1A) or Article 131CA(2B).
- (2D) For the purposes of paragraphs (2A) and (2B) –
- (a) ‘income’ means the individual’s total income disregarding any of the following paid by the individual in the year of assessment –
- (i) any interest in respect of which the individual is entitled to a marginal income deduction under Article 90AA, and
- (ii) the aggregate of any payment described in sub-paragraphs (a) to (d) of paragraph (9);
- (b) ‘total contributions’ mean the aggregate of any payment described in sub-paragraphs (a) to (d) of paragraph (9).”;
- (c) for paragraph (3)(e) there shall be substituted the following sub-paragraph –
- “(e) the individual may elect to commute the whole of the fund in respect of which, if the election was not made, the payment of the annuity to him or her (such payment not yet having commenced) would be made by reason of the fact that the individual is in serious ill health, such term being construed in accordance with paragraph (3A),”;
- (d) After paragraph (3) there shall be inserted the following paragraph –
- “(3A) For the purposes of paragraph (3)(e), an individual is not in serious ill health unless the person having control of the annuity

fund has received evidence from a medical practitioner that the individual is expected to live for less than one year.”.

## 18 Article 131CA amended

In Article 131CA of the principal Law –

- (a) in paragraph (2) before the words “Except in the circumstances described” there shall be inserted the words “Subject to paragraph (2A) and”;
- (b) after paragraph (2) there shall be inserted the following paragraphs –
  - “(2A) In the case of a contribution paid in a year of assessment into a retirement annuity trust scheme by an individual whose income in that year exceeds £150,000, no deduction shall be made under paragraph (2) unless the total contributions paid by the individual in the year of assessment exceed the amount of the excess income (‘excess income’ being the amount of the individual’s income less £150,000).
  - (2B) In the circumstances described in paragraph (2A), the amount that may be deducted under paragraph (2) is £1 for every £1 by which the total contributions paid by the individual in the year of assessment exceed the excess income.
  - (2C) If a deduction is made in the circumstances described in paragraph (2A) no deduction shall be allowed under Article 131(1A) or Article 131B(2B).
  - (2D) For the purposes of paragraphs (2A) and (2B) –
    - (a) ‘income’ means the individual’s total income disregarding any of the following paid by the individual in the year of assessment –
      - (i) any interest in respect of which the individual is entitled to a marginal income deduction under Article 90AA,
      - (ii) the aggregate of any payment described in sub-paragraphs (a) to (d) of paragraph (12);
    - (b) ‘total contributions’ mean the aggregate of any payment described in sub-paragraphs (a) to (d) of paragraph (12).”;
- (c) for paragraph (4)(f) there shall be substituted the following paragraph –
  - “(f) for the primary beneficiary to elect to receive a lump sum by way of commutation of the whole of the fund in respect of which, if the election was not made, the payment of annuity equivalents to him or her (such payment not yet having commenced) would otherwise be made by reason of the fact that the primary beneficiary is in serious ill health, such term being construed in accordance with paragraph (4A).”;
- (d) after paragraph (4) there shall be inserted the following paragraph –
  - “(4A) For the purposes of paragraph (4)(f) a primary beneficiary is not in serious ill health unless the trustees of the retirement annuity trust

scheme have received evidence from a medical practitioner that the primary beneficiary is expected to live for less than one year.”.

**19 Years of assessment for which this Part has effect**

This Part shall have effect for the year of assessment 2012 and ensuing years.

## **PART 6**

### **MISCELLANEOUS**

**20 Article 41HA inserted**

After Article 41H there shall be inserted the following Article –

**“41HA Tax deducted under the Social Security (Jersey) Law 1974**

- (1) If the Minister of Social Security is required under the Social Security (Jersey) Law 1974<sup>4</sup> to deduct income tax from a component of a benefit payable to a person under that Law, tax shall be deducted at the same effective rate which the person’s employer would have been required to deduct had such component been paid by the employer to the person as earnings when such earnings were due to be paid.
- (2) The Comptroller may issue a notice, in writing, to the Minister for Social Security, of the effective rate for the purposes of paragraph (1).
- (3) The amount of income tax deducted under paragraph (1) shall be remitted to the Comptroller and received by the Comptroller as a payment of tax by the person to whom the benefit is paid.”.

**21 Article 55 amended**

In Article 55(2) of the principal Law for the word “76A” there shall be substituted the word “76C”.

**22 Years of assessment for which this Part shall have effect**

This Part shall have effect for the year of assessment 2012 and ensuing years.

**PART 7****DEEMED DIVIDEND - COMPUTATION AND TAX ALLOWANCE****23 Article 81B amended**

- (1) In Article 81B(1) of the principal Law, at the end of the definition “relevant dividend”, there shall be added the words “but, in either case, no later than 31st December 2011”.
- (2) This Article shall come into force forthwith.

**24 Schedule 5 amended**

- (1) In Schedule 5 to the principal Law, after paragraph 8 there shall be added the following paragraph –

**“8A Income Tax (Amendment No. 38) (Jersey) Law 201- and Income Tax (Amendment No. 40) (Jersey) Law 201-: deemed shareowners**

- (1) This paragraph applies where –
  - (a) pursuant to Article 82A, an individual is deemed to own shares in a Jersey trading company or Jersey financial services company (referred to in this paragraph as ‘Company A’); and
  - (b) by virtue of Article 81D or 81G the individual is deemed to receive a dividend out of the relevant profits of Company A.
- (2) Tax in respect of –
  - (a) income arising from dividends and distributions (other than relevant dividends) paid out of the relevant profits –
    - (i) by Company A,
    - (ii) to a company or other entity through which the individual is deemed to own the shares in Company A; and
  - (b) income arising from dividends and distributions paid out of income described in sub-paragraph (a) –
    - (i) by a company or other entity through which the individual is deemed to own the shares in Company A,
    - (ii) to the individual or to another company or entity through which the individual is deemed to own the shares in Company A,

shall not be charged on so much of the income as comprises or is derived from the amount of the dividend that the individual is deemed to receive from Company A.
- (3) Where, by virtue of sub-paragraph (2), the liability of a body of persons to tax on income arising from dividends or distributions is reduced, the amount of tax that the body of persons is entitled by

virtue of Article 88(2) or (3) to deduct when paying a dividend out of that income, as described in sub-paragraph (2)(b), is correspondingly reduced.”.

- (2) This Article shall have effect for the year of assessment 2011 and ensuing years.

## **PART 8**

### **CLOSING**

#### **25 Citation**

This Law may be cited as the Income Tax (Amendment No. 40) (Jersey) Law 201-.

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- <sup>1</sup> *chapter 24.750*
  - <sup>2</sup> *chapter 10.800*
  - <sup>3</sup> *chapter 20.600*
  - <sup>4</sup> *chapter 26.900*