

STATES OF JERSEY



DRAFT TAXATION (ACCOUNTING RECORDS) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 16th April 2013
by the Chief Minister

STATES GREFFE



Jersey

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REPORT

In October 2011 the Global Forum on Transparency and Exchange of Information for Tax Purposes adopted a peer review report for Jersey. The report stated that “Overall, this review of Jersey identifies a legal and regulatory framework for the exchange of information which generally functions effectively to ensure that the required information will be available and accessible”.

There were 9 elements subject to review, of which 6 were considered to be “in place” and 3 were considered to be “in place, but certain aspects of the legal implementation of the element need improvement”. One of the 3 was the element referring to the ‘Availability of Information – Accounting Records’.

The assessors undertaking the review recognised that all companies resident in Jersey (being incorporated, or managed and controlled in Jersey), or which have a permanent establishment in Jersey, are already required under the Income Tax Law to complete and file a financial statement. They also recognised that under the Trust Law, trustees are required to keep accurate accounts and records of their trusteeship. However, they considered there were insufficient express obligations to produce the required accounting records and that certain aspects of the legal implementation of the element needed improvement. Their recommendations were to –

- Introduce consistent obligations for all relevant entities and arrangements to maintain reliable accounting records, including underlying documents in line with the Terms of Reference;
- Clarify binding requirements of LPs, SLPs, ILPs, trusts and foundations, to maintain reliable accounting records for at least a minimum 5 year period.

In the Terms of Reference for the peer reviews “relevant entities and arrangements” is said to include: (i) a company, foundation, Anstalt and any similar structure, (ii) a partnership or other body of persons, (iii) a trust or any similar structure, (iv) a collective investment fund or scheme, (v) any person holding assets in a fiduciary capacity, and (vi) any other entity or arrangement deemed relevant in the case of the specific jurisdiction assessed.

The Terms of Reference provide that jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements and that those accounting records should –

- (i) correctly explain all transactions, (ii) enable the financial position of the Entity or Arrangement to be determined with reasonable accuracy at any time, and (iii) allow financial statements to be prepared;

- further include underlying documentation, such as invoices, contracts, etc. and should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement;
- be kept for 5 years or more.

Similar recommendations to those included in the Global Forum peer review report for Jersey were included in the Global Forum peer review report for Guernsey. The Guernsey legislative response, which is mirrored in these Regulations, has met the requirements of the Global Forum and their determination of “in place, but certain aspects of the legal implementation of the element need improvement” has been upgraded to “in place”.

Before the end of this year, the Global Forum will agree the overall rating of the jurisdictions that have been fully assessed. A failure to meet the accounting records standard in full through the making of these Regulations may well lead to a lower rating than that granted to other jurisdictions with whom Jersey would wish to be compared.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations enact, for Jersey, minimum standards for making and keeping accounting records. These are international standards set by the Global Forum on Transparency and Exchange of Information for Tax Purposes, with which all jurisdictions are expected to comply. Although Jersey's existing legislation imposes similar requirements on certain entities such as companies, it does not fully do so for the full range of entities recognized by Jersey law. These Regulations address that disparity.

By virtue of *Regulation 2*, these Regulations apply to any person (which is defined by the Interpretation (Jersey) Law 1954 as including any body of persons whether corporate or unincorporated) receiving or possessing any income or profits from a business or from letting property, whether or not that person is obliged to make a tax return to the Comptroller of Taxes, and whether or not that person is under any other statutory duty or requirement to keep accounts or records.

A person subject to the application of these Regulations must ensure that accounting records are made in compliance with the requirements set out in *Regulation 3*. By *Regulation 3(2)*, adequate accounting records should be such as to enable the preparation of accounts, should show and explain the person's transactions, and should disclose the person's financial position with reasonable accuracy at any time. In addition, a person carrying on a business must also ensure that accounting records contain the supporting documentation described in paragraph (3) of that Regulation; accounting records of all other persons must contain the supporting documentation described in paragraph (4).

Regulation 4 requires that accounting records must be kept by the person for a period of at least 6 years beginning with the end of the relevant year of assessment (if the person is taxable under the Income Tax (Jersey) Law 1961), or (in any other case) beginning with the end of the calendar year in which the records are made. "Year of assessment", like other expressions also used in the Income Tax (Jersey) Law 1961, is to be understood in the same way as in that Law (*Regulation 1*, which provides for the interpretation of these Regulations).

Under *Regulation 5*, the Comptroller of Taxes may serve a notice on a person to whom these Regulations apply, requiring accounting records or copies of them to be furnished as the Comptroller may require, for the purpose of ascertaining whether or not there is compliance with these Regulations.

If accounting records are held outside Jersey, *Regulation 6* provides that a person must ensure that control of the records is retained and that there are effective arrangements in place for the return of the records to Jersey where necessary.

Regulation 7 imposes liability to criminal sanctions where a person fraudulently or negligently furnishes incorrect accounts or records to the Comptroller. In a case of fraud, the penalty is 5 years' imprisonment or a fine; in a case of negligence, the penalty is a fine of level 4 on the standard scale.

A person convicted of an offence of failing to comply with a requirement imposed by Regulation 3, 4, 5 or 6 is liable to a fine of level 4 on the standard scale. Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, a fine of level 4 is £5,000.

Regulation 8 gives the Comptroller of Taxes power to impose an additional penalty where failure to keep accounting records in accordance with these Regulations is likely to prejudice the Comptroller in carrying out a statutory function.

Regulation 9 provides that penalties recovered under these Regulations shall be paid into the consolidated fund. *Regulation 10* provides for the citation of these Regulations and for their commencement 7 days after they are made.



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Arrangement

Regulation

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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 2004¹ and following the decision of the States, taken on the day these Regulations are made, to adopt P.50/2013, have made the following Regulations –

1 Interpretation

- (1) In these Regulations, the “1961 Law” means the Income Tax (Jersey) Law 1961².
- (2) An expression used in these Regulations which is also used in the 1961 Law has the same meaning as in that Law, unless otherwise indicated.
- (3) In these Regulations, reference to a record includes information recorded in any form and, in relation to information recorded otherwise than in legible form, reference to furnishing a record includes reference to furnishing a copy of the record in legible form.

2 Application

- (1) These Regulations apply to every person in receipt or possession of any income or of any profits arising from the carrying on of a business or from the letting of property.
- (2) It does not matter, for the purpose of the application of these Regulations, whether or not a person is required to make a statement or other return to the Comptroller in respect of liability to tax under the 1961 Law.
- (3) A requirement imposed by these Regulations shall apply in addition to, and not in derogation from, any duty or requirement to keep or deal with accounts or records imposed by or under the 1961 Law or any other enactment.

3 Adequacy of accounting records

- (1) A person to whom these Regulations apply shall make and keep adequate accounting records in accordance with the provisions of this Regulation and Regulations 4 to 6.
- (2) Accounting records are adequate if –
 - (a) they are such as to enable the preparation of accounts and –
 - (i) to show and explain the person's transactions,
 - (ii) to disclose with reasonable accuracy, at any time, the financial position of the person at that time,
 - and
 - (b) they fulfil the requirements of either paragraph (3) or paragraph (4), as the case may be.
- (3) In the case of a person carrying on a business, accounting records are not adequate unless they contain –
 - (a) records of all amounts received and expended by the business and the reasons for the receipt or expenditure;
 - (b) in the case of a business dealing in goods, records of all sales and purchases of goods made in the course of the business;
 - (c) records of all assets and liabilities of the business, including in particular –
 - (i) all shares, interests or units held by the business in any other person or arrangement, and
 - (ii) records of all stock in hand at the end of the year of assessment and a statement of the basis on which the stock is valued;
 - (d) all invoices, receipts, certificates, contracts, vouchers or other supporting documents relating to records described in paragraphs (a) to (c); and
 - (e) in a case where there are no supporting documents in relation to any goods purchased by the business, the name and address of the supplier of the goods.
- (4) In the case of any other person, accounting records are not adequate unless they contain, in relation to the person's income –
 - (a) records of all amounts received, arising or accruing;
 - (b) the names and descriptions of the persons or sources from which the amounts so recorded were received, arose or accrued;
 - (c) records of all assets and liabilities of the person, including in particular –
 - (i) all shares, interests or units held by the person in any other legal person or arrangement, and
 - (ii) records of all stock in hand at the end of the relevant year of assessment and a statement of the basis on which the stock is valued;

- (d) any other records which contain or may contain information relevant to any liability to tax to which the person is or may be subject or the amount of any such liability;
 - (e) all invoices, receipts, certificates, contracts, vouchers or other supporting documents relating to records described in paragraphs (a), (c) and (d).
- (5) A person who, without reasonable excuse, fails to comply with this Regulation shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

4 Preservation of accounting records

- (1) Accounting records made by a person under Regulation 3 shall be kept by the person for a period of at least 6 years beginning immediately after the end of –
- (a) the year of assessment in relation to which a statement as to income is required to be delivered under Part 4 of the 1961 Law; or
 - (b) where no such return is required to be delivered, the calendar year in which the accounting record or document in question was created.
- (2) A person who, without reasonable excuse, fails to comply with paragraph (1) shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

5 Duty to produce accounting records

- (1) The Comptroller may by notice served on any person to whom these Regulations apply require the person to furnish, by such a date or within such a period as may be specified in the notice, such accounting records or part of those records as the Comptroller may require for the purpose of ascertaining whether or not the requirements imposed by Regulations 3, 4 and 6 are being fulfilled.
- (2) A person who, without reasonable excuse, fails to furnish accounting records in compliance with a notice served by the Comptroller under paragraph (1) shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

6 Accounting records kept outside Jersey

- (1) Where accounting records are kept outside Jersey, the person on whom the requirement to keep those records is imposed shall ensure –
- (a) that the records remain within that person's power and control; and
 - (b) that effective arrangements are in place for delivery of the records to Jersey and –
 - (i) for the records to be furnished to the Comptroller in accordance with any notice served in relation to them under Regulation 5, and

- (ii) for the records to be furnished, disclosed, delivered or in any way provided to the Comptroller or any other person in accordance with any requirement to do so imposed by or under the 1961 Law or any other enactment.
- (2) In this Regulation and in Regulation 7, “records” includes all such supporting documents and information as described in Regulation 3(3) and (4).
- (3) A person who, without reasonable excuse, fails to comply with this Regulation shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

7 Penalties for fraudulently or negligently furnishing false or incorrect accounts, etc.

- (1) If any person fraudulently or negligently furnishes to the Comptroller any incorrect accounts or records in purported compliance with these Regulations, the person shall be guilty of an offence.
- (2) Where an offence under paragraph (1) –
 - (a) is committed negligently, the person shall be liable to a fine of level 4 on the standard scale;
 - (b) is committed fraudulently, the person shall be liable to imprisonment for a term of 5 years and to a fine.
- (3) Where any accounts or records are made or furnished by a person neither fraudulently nor negligently but it comes to the person’s notice that they are incorrect, the accounts or records shall be treated for the purposes of this Regulation as having been negligently made or furnished, unless the error is remedied without unreasonable delay.

8 Penalty to be imposed by Comptroller

- (1) If, in the opinion of the Comptroller –
 - (a) a person has failed to make and keep adequate accounting records in accordance with these Regulations; and
 - (b) that failure may adversely affect the Comptroller’s performance of a function under the 1961 Law or any other enactment,the Comptroller may impose on the person a penalty not exceeding £2,500.
- (2) An appeal shall lie to the Commissioners against a penalty imposed by the Comptroller under paragraph (1) and the provisions of Articles 27 to 36 of the 1961 Law shall apply accordingly in respect of any such appeal as if it were an appeal under that Law.

9 Penalties to belong to States’ revenues

All penalties recovered under these Regulations shall be paid into the consolidated fund.

10 Citation and commencement

These Regulations may be cited as the Taxation (Accounting Records) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- ¹ *chapter 17.850*
² *chapter 24.750*