

STATES OF JERSEY



Jersey

DRAFT TAXATION (EXCHANGE OF INFORMATION – AMENDMENT) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 5th May 2023
by the Minister for External Relations
Earliest date for debate: 4th July 2023**

STATES GREFFE

REPORT

Background

These draft Regulations would amend the following Regulations:

- [Taxation \(Exchange of Information with Third Countries\) \(Jersey\) Regulations 2008](#).
- [Taxation \(Double Taxation\) \(Jersey\) Regulations 2010](#)
- [Taxation \(Implementation\) \(Convention on Mutual Administrative Assistance in Tax Matters\) \(Jersey\) Regulations 2014](#)

The Regulations aim to clarify the international standard of “Foreseeable Relevance” – an important feature of exchanges of tax information under Jersey’s international tax agreements.

The international standard is set by the Organisation for Economic Co-operation and Development (OECD) in its Model Tax Convention on Income and Capital, including its Commentaries on the Articles of the Model Convention.

Article 26 of the Model Convention deals with Exchange of Information and the Commentary on Article 26 speaks in some detail to the concept of Foreseeable Relevance.

Put briefly, when a Third Country requests tax information from Jersey, the Competent Authority (the Minister for Treasury & Resources – delegating his functions for all practical purposes to the Comptroller of Revenue) must be satisfied that the request is foreseeably relevant to the administration and enforcement of that Third Country’s taxes.

Purpose

In a recent case in the Royal Court (*Prahl & Triton v The Office of the Comptroller of Revenue*¹), the Court effectively quashed 2 notices to produce information (“Production Notices”) which had been issued by the Comptroller of Revenue (as Delegated Competent Authority) in pursuit of a request from the Kingdom of Sweden.

The Royal Court took the view that the information requested by Sweden was not foreseeably relevant, essentially because Sweden had not yet finally determined whether the subject of the Production Notices was tax-resident in Sweden.

In reaching that judgment, the Royal Court had had regard to a point raised in an earlier case (*Haskell v Comptroller of Taxes*²) which had not, in the view of the Government, been fully argued in that case before the Royal Court at that time. The Comptroller was subsequently refused permission to appeal the matter to the Privy Council.

The Prahl judgment currently leaves Jersey unable to comply with the OECD international standard for exchanging information on request with Third Countries.

In the Government’s opinion, shared by the OECD, Jersey law is now out-of-step with the international standard of Foreseeable Relevance which has put at risk the Island’s “Compliant” rating in future Peer Reviews for the OECD Global Forum.

Unless this matter is addressed, the issue will likely invite further challenges by taxpayers (and their associates). This would either prevent outright (or, at the very least, delay) the international exchange of information.

Legislation is, therefore, the only means of achieving the necessary change in law to ensure that Jersey can comply with the international standard.

¹ Prahl & Triton v The Comptroller of Revenue [2022] JRC061

² Haskell v Comptroller of Taxes [2017] JRC088

Consequently, for the avoidance of doubt, this Amendment seeks to clarify the international standard of Foreseeable Relevance, partly by referencing the Commentary on the Model Tax Convention. It intends to over-rule the current position in law established by the Prahł judgment, for example, by making it clear that tax residency does not need to have been finally determined by a Third Country before requesting information from Jersey that may help it to determine liability of a person to taxation in that Third Country - including determining the question of whether an individual might be resident in that country for tax purposes.

Financial and/or manpower implications

There are no financial and/or manpower implications.

EXPLANATORY NOTE

These Regulations, if passed, would amend the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008, the Taxation (Double Taxation) (Jersey) Regulations 2010 and the Taxation (Implementation) (Convention on Mutual Administrative Assistance in Tax Matters) (Jersey) Regulations 2014 in relation to the sharing of tax information with third countries by clarifying what is meant by “foreseeably relevant” to the administration or enforcement of domestic tax laws in a third country. They come into force on the day after they are made.



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DRAFT TAXATION (EXCHANGE OF INFORMATION – AMENDMENT) (JERSEY) REGULATIONS 202-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under Article 2 of the [Taxation \(Implementation\) \(Jersey\) Law 2004](#) –

1 [Taxation \(Exchange of Information with Third Countries\) \(Jersey\) Regulations 2008](#) amended

For Regulation 1A (tax information) of the [Taxation \(Exchange of Information with Third Countries\) \(Jersey\) Regulations 2008](#) there is substituted –

“1A Tax information

- (1) For the purposes of these Regulations “tax information” means information that is foreseeably relevant to the administration or enforcement, in the case of the person who is the subject of a request, of the domestic laws of the third country whose competent authority is making the request concerning any tax listed in the third column in the Schedule opposite the entry for that third country, including information that is foreseeably relevant to –
 - (a) the determination or assessment of the liability of the person to such taxes;
 - (b) the determination, assessment and collection of such taxes;
 - (c) the recovery and enforcement of such taxes;
 - (d) the recovery and enforcement of tax claims; or
 - (e) the investigation or prosecution of tax matters.
- (2) Information is foreseeably relevant to the administration or enforcement of the domestic laws of a third country –
 - (a) if there are reasonable grounds to believe that there is sufficient connection between the person who is the subject of the request and the domestic laws of the third country and that there is a reasonable possibility those laws may apply to the person; and
 - (b) regardless of whether there are matters that are still to be determined by the third country in respect of the person’s liability to tax.

- (3) When determining whether information is foreseeably relevant regard must be had to the Model Tax Convention on Income and on Capital: Condensed Version (including the commentary), as updated from time to time, published by the Organisation for Economic Cooperation and Development.
- (4) Tax information may be –
 - (a) information within an individual’s knowledge or belief; or
 - (b) information recorded in a document or any other record in any format, that a person has in their possession, custody or control.”.

2 [Taxation \(Double Taxation\) \(Jersey\) Regulations 2010](#) amended

For Regulation 1A (tax information) of the [Taxation \(Double Taxation\) \(Jersey\) Regulations 2010](#) there is substituted –

“1A Tax information

- (1) For the purposes of these Regulations “tax information” means information that is foreseeably relevant to the administration or enforcement of the third country whose competent authority is making the request under a DTA concerning taxes of the third country that may be the subject of the exchange of information under the DTA, including information that is foreseeably relevant to –
 - (a) the determination or assessment of the liability of the person to such taxes;
 - (b) the determination, assessment and collection of such taxes;
 - (c) the recovery and enforcement of such taxes;
 - (d) the recovery and enforcement of tax claims; or
 - (e) the investigation or prosecution of tax matters.
- (2) Information is foreseeably relevant to the administration or enforcement of the domestic laws of a third country –
 - (a) if there are reasonable grounds to believe that there is sufficient connection between the person who is the subject of the request and the domestic laws of the third country and that there is a reasonable possibility those laws may apply to the person; and
 - (b) regardless of whether there are matters that are still to be determined by the third country in respect of the person’s liability to tax.
- (3) When determining whether information is foreseeably relevant regard must be had to the Model Tax Convention on Income and on Capital: Condensed Version (including the commentary), as updated from time to time, published by the Organisation for Economic Cooperation and Development.
- (4) Tax information may be –
 - (a) information within an individual’s knowledge or belief; or
 - (b) information recorded in a document or any other record in any format, that a person has in their possession, custody or control.”.

Taxation (Implementation) (Convention on Mutual Administrative Assistance in Tax Matters) (Jersey) Regulations 2014 amended

- (1) This Regulation amends the [Taxation \(Implementation\) \(Convention on Mutual Administrative Assistance in Tax Matters\) \(Jersey\) Regulations 2014](#).
- (2) In Regulation 1 (interpretation) –
 - (a) in paragraph (1) for the definition “tax information” there is substituted –
“tax information” has the meaning given in Regulation 1A.”;
 - (b) paragraph (2) is deleted.
- (3) After Regulation 1 there is inserted –

“1A Tax information

- (1) For the purposes of these Regulations “tax information” means information that is foreseeably relevant to the administration or enforcement of the domestic laws of the requesting Party concerning any tax described in Article 2(1)(a) of the Convention and listed in Annex A to the Convention as being a tax of the requesting Party, including information that is foreseeably relevant to –
 - (a) the determination or assessment of the liability of person to such taxes;
 - (b) the determination, assessment and collection of such taxes;
 - (c) the recovery and enforcement of such taxes;
 - (d) the recovery and enforcement of tax claims; or
 - (e) the investigation or prosecution of tax matters.
- (2) Information is foreseeably relevant to the administration or enforcement of the domestic laws of a requesting Party –
 - (a) if there are reasonable grounds to believe that there is sufficient connection between the person who is the subject of the request and the domestic laws of the requesting Party and that there is a reasonable possibility those laws may apply to the person; and
 - (b) regardless of whether there are matters that are still to be determined by the requesting Party in respect of the person’s liability to tax.
- (3) When determining whether information is foreseeably relevant regard must be had to the Model Tax Convention on Income and on Capital: Condensed Version (including the commentary), as updated from time to time, published by the Organisation for Economic Cooperation and Development.
- (4) Tax information may be –
 - (a) information within an individual’s knowledge or belief; or
 - (b) information recorded in a document or any other record in any format, that a person has in their possession, custody or control.”.

4 Citation and commencement

These Regulations may be cited as the Taxation (Exchange of Information – Amendment) (Jersey) Regulations 202- and come into force the day after they are made.