

STATES OF JERSEY



DRAFT INCOME TAX (AMENDMENT No. 37) (JERSEY) LAW 201-

**Lodged au Greffe on 26th October 2010
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT INCOME TAX (AMENDMENT No. 37) (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. 37) (Jersey) Law 201- are compatible with the Convention Rights.

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

REPORT

This Draft Law gives effect to proposals described in the Expenditure Proposals for 2012 and 2013 and Draft Budget Statement 2011.

Financial and manpower implications

The financial and manpower implications are clearly identified at Part C of the Expenditure Proposals for 2012 and 2013 and Draft Budget Statement 2011 (P.157/2010)

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 21st October 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. 37) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

Part 1 – Interpretation

Article 1 defines the Income Tax (Jersey) Law 1961 as the “principal Law”.

Part 2 – Assessments, returns and ITIS

Article 2 amends Article 16 of the principal Law, which imposes the requirement to make a tax return. The amendment requires a person liable to tax on dividends and other distributions of a Jersey company, or on deemed dividends or full attribution, or on a shareholder loan, to submit with the tax return a copy of the company’s accounts for the financial period to which the person’s tax liability relates.

Article 3 amends Article 17A of the principal Law, which imposes the fixed penalty for late delivery of a tax return. Currently, companies are exempt from the £250 penalty. The amendment has the effect that the penalty applies to a company that does not submit its return by 6 p.m. on the last Friday in July in the year following the year of assessment to which the return relates.

Article 4 amends Article 24 of the principal Law. Article 24 enables the Comptroller to raise an amended or additional assessment where either there has been a first assessment, but it is too low, or the taxpayer has not delivered a return at all, or has delivered an incomplete return. The amendment widens the power to raise an amended or additional assessment to cases where the taxpayer has not complied with the requirement created by *Article 2* to submit a copy of company accounts with his or her return, or has not complied with a requirement to provide further documents or information, imposed by the Comptroller under Article 16A of the principal Law.

Article 5 amends Articles 41C and 41H regarding the collection of tax through ITIS. Currently, an individual’s ITIS rate is calculated by reference to the individual’s tax liability for a whole year. However, if it transpires that the ITIS rate has been calculated on the basis of an under-assessment of the individual’s tax liability, issuing a revised ITIS rate for the individual for the remainder of the year will not, currently, have the effect that the shortfall in the tax collected before the issue of the revised rate is collected in the remainder of the year. The amendment would revise the rules for calculation of the ITIS rate so that the whole of the remainder of the tax due from the individual for the whole year is collected in the remaining period of the year. The revised ITIS rate would be subject to a limit already imposed by Article 41C(9) of the principal Law in respect of ITIS rates as follows –

- “(9) The rate shall not exceed –
- (a) in a case where the employee has no arrears of tax, 20%;
 - (b) in a case where the employee has arrears of tax for one year of assessment, 25%;
 - (c) in a case where the employee has arrears of tax for 2 years of assessment, 30%;
 - (d) in a case where the employee has arrears of tax for 3 or more years of assessment, 35%.”.

Part 3 – Schedule A

Taxation of quarrying, etc.

Article 6 amends Article 51 of the principal Law so as to bring into the charge to tax under Schedule A the profits of any trade of excavating or quarrying of land, or any like trade. Currently, such profits of a trade would be taxed under Schedule D and, accordingly taxed at 0% in the case of a Jersey trading company. Under Schedule A, the profits will be taxed at the standard rate.

Because the profits being taxed are those of a trade, the remaining Articles of this Part provide for rules for computation that would apply to the taxation of the profits of a trade under Schedule D to apply, even though the profits are being taxed under Schedule A.

Article 7 provides that the deductions that would be allowed against the profits of a trade under Schedule D shall be allowed when taxing the profits under Schedule A.

Article 8 applies the same rules for taxing such profits of a partnership under Schedule A as would apply to their taxation under Schedule D.

Article 9 provides that profits arising in a financial period ending in a year of assessment are charged to tax even if no profits arise within the year of assessment itself and also imposes a requirement for the company's statement of profits to include every source of income chargeable to tax.

Article 10 makes it clear that Schedule D does not apply to the profits of a trade that are taxed under Schedule A.

Article 11 provides that contributions to a pension fund shall continue to be allowed as a deductible expense against the profits of quarrying.

Article 12 provides that miscellaneous provisions of the principal Law which currently apply to the taxation of the profits of quarrying under Schedule D shall continue to apply, notwithstanding that it is taxed under Schedule A. Specifically, a person's earned income shall continue to include profits arising from the trade; the Comptroller shall continue to have the power to require a person to deliver a statement of the profits of the trade; the Comptroller must continue to prepare lists containing a full and just assessment of the profits or gains; the basis for computation of tax under Schedule A in respect of the trade is to be the same as for taxation of a trade under Case I of Schedule D; the profits of the trade shall continue to be part of a person's qualifying income for the purpose of calculating the exemption threshold increase in respect of child day care; and there shall continue to be the right to carry back or forward losses against the profits of the trade.

Non-resident landlords

Article 13 amends Schedule 3A to the principal Law. Schedule 3A requires the deduction of, and accounting to the Comptroller for, tax on rent due to a non-resident landlord. Two changes are made.

Currently the obligation to deduct tax from rent arises in every case where rent is payable to the non-resident landlord's agent or where a tenant pays rent direct to the non-resident landlord and the rent is more than £25,000. The amendment adding paragraph 4A to the Schedule empowers the Comptroller to direct any tenant paying rent of £25,000 or less to deduct tax from the rent and account to the Comptroller for the tax.

In addition, if a non-resident landlord is in arrears of income tax, the Comptroller may direct the person deducting tax from rent, whether that is the landlord's agent or the tenant, to deduct tax at a rate higher than the standard rate. The higher rate is restricted, in exactly the same way as the recovery of arrears through ITIS is restricted, as described in *Article 5*, above. A non-resident landlord would have the right to appeal against the imposition of a higher rate.

Part 4 - Schedule D

Pensions, annuities, etc.

Article 14 adds and amends definitions in the principal Law. The definition "annuity equivalent" is added for the purposes of *Articles 15 and 16*. The opportunity is taken to refine (but not alter in substance) the definition "earned income" to reflect the fact that various provisions already in the principal Law provide for certain payments to be treated as if they were earned income.

Article 15 makes it clear that an annuity equivalent (payable under a retirement annuity trust) is taxed under Case II of Schedule D.

Article 16 makes it clear that the obligation to deduct tax from a payment made out of profits or gains that, themselves, have not been taxed, applies to the payment of an annuity equivalent.

Article 17 amends Article 131B of the principal Law. Article 131B specifies the characteristics and tax treatment of retirement annuity contracts. Amendments are made for 2 purposes.

Certain rules about the tax treatment of money paid out of a retirement annuity contract currently turn upon whether, at the time the payment is made, the individual to whose office or employment the contract relates has retired. Now that individuals are likely to work past the traditional retirement age, it is no longer clear what constitutes "retirement". Accordingly the rules are clarified by providing that the tax treatment of payments out of the contract turns instead upon whether the individual has previously received any benefit from the contract, whether by commencement of payments or by way of commutation.

The rules for commutation of trivial funds are refined. Currently an individual may commute up to 2 funds under either or both of Articles 131B (annuity contracts) and 131CA (retirement annuity trusts), provided that each fund does not exceed £30,000. There are separate rights to commute superannuation funds (Article 131) of less than £30,000, conferred by the Income Tax (Superannuation Funds) (Jersey) Order 1972. The amendments, together with the amendments of Article 131CA and amendments to the 1972 Order that the Minister for Treasury and Resources intends to make, have the effect that an individual will have the right to commute the whole of any of these funds provided that the aggregate amount commuted, from all such funds, does not exceed £30,000. In addition, the date at which an individual may commute on grounds of triviality will be standardised to 60 years.

Article 18 amends Article 131CA of the principal Law for several purposes. Article 131CA specifies the characteristics and tax treatment of a retirement annuity trust. Amendments are made for 3 purposes. The first 2 are the same as for the amendments of Article 131B by *Article 17* of this draft Law. The third amendment

corrects a reference to a retirement annuity scheme having more than one secondary beneficiary, as there can be only one such beneficiary of a scheme - the primary beneficiary's spouse.

Deemed dividends and full attribution

Article 19 amends Articles 81B and 81N of the principal Law. Article 81B provides for the construction of expressions used in Case VIII of Schedule D. Article 81N creates a right to a tax credit on a dividend paid out of profits where the individual receiving the dividend has already been taxed on a deemed dividend out of those profits.

An individual is taxed on dividends actually received within a calendar year, but deemed dividends are calculated by reference to the financial period of the company in which the shares are held. This complicates the arrangements for taxation of the individual if that financial period does not coincide with the calendar year. The amendment provides that, when a liability to a deemed dividend is calculated, all dividends paid up to the end of a year of assessment are taken into account in determining the deemed dividend, even if the financial period by reference to which the deemed dividend is calculated, ends mid-year. The consequence is that a taxpayer who is currently taxed twice on profits, both as a deemed dividend and as an actual dividend paid after the end of the company's financial period and before the end of the year of assessment, and who must claim a tax credit to recoup the overpayment, will only be taxed once.

Article 20 amends Articles 85F and 85H so as to make, in relation to an individual subject to taxation on full attribution of the profits of a company, the like adjustment to that made by *Article 19*.

Article 21 is primarily concerned with a situation where the whole of the ordinary share capital of a company is disposed of, the disposal is either by or to an individual liable to pay tax on deemed dividends or on full attribution, and the disposal does not take place at the end of a financial period.

The amendment has the effect that, if both the persons disposing of the shares and the persons acquiring the shares so elect, the rules for liability to and calculation of deemed dividends or full attribution apply as if the part of the financial period leading up to the disposal and the part of the financial period following the disposal were separate financial periods. This is considered to be fairer to the parties to the transaction. In the absence of the opportunity to make the election, a former shareholder may otherwise find himself or herself liable to tax on deemed dividends or full attribution on increased profits accruing to the company after he or she has ceased to have any beneficial interest in the company. Equally, a person acquiring shares in a company whose profits fall following the acquisition may otherwise find his or her liability to tax on deemed dividends or full attribution calculated by reference to profits arising before the person acquired a beneficial interest in the company.

In addition, if the disposal of shares is ordered by a court (for example, in matrimonial proceedings) and the disposal does not take place at the end of a financial period, the court is given the power to further order that the principal Law shall apply as if an election had been made for the part of the financial period preceding the disposal and the part of the financial period following the disposal to be treated as separate financial periods.

Article 22 clarifies the liability to tax where a beneficiary of a trust is the beneficial owner of shares that are held in the name of the trust. The Law already provides that any liability to tax on deemed dividends or on full attribution is charged on the trustees. The amendment makes it clear that, if the trustees do not comply with the Law, the Comptroller may instead raise the assessment on the beneficiary.

Taxation of importation and supply of hydrocarbon oils

Article 23 imposes a new charge to tax on the trade of importing and supplying hydrocarbon oils. It applies to companies which are currently taxed at 0%. From the year of assessment 2012 a company which imports and supplies hydrocarbon oils to propel vehicles, vessels or airplanes or as heating oil will be taxed at the standard rate on its profits arising from that trade. Its profits arising from any other trade will continue to be taxed at 0%.

The new charge to tax will also apply to a company which does not import but supplies hydrocarbon oils, if the company is connected with, or a subsidiary of, another company that both imports and supplies them. Article 3A(4) of the principal Law describes circumstances in which one company is connected with another. Article 3AB of the principal Law describes circumstances in which one company is a subsidiary of another.

Part 5 – Closing provision

Article 24 provides for the citation and commencement of this draft Law. The charge to tax under Schedule A on the trade of quarrying, and the amendments in respect of deemed dividends and full attribution (apart from *Article 22*) will have effect for the year of assessment 2011 and ensuing years. The charge to tax under Schedule D on the trade of importing and supplying hydrocarbon oil will have effect for the year of assessment 2012 and ensuing years. Otherwise, this draft Law would come into force on 1st January 2011.



Jersey

DRAFT INCOME TAX (AMENDMENT No. 37) (JERSEY) LAW 201-

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Jersey

DRAFT INCOME TAX (AMENDMENT No. 37) (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

INTERPRETATION

1 Interpretation

- (1) In this Law “principal Law” means the Income Tax (Jersey) Law 1961¹.
- (2) A reference in this Law to an Article or other provision of a Law by number only is a reference to the Article or other provision of that number in the principal Law.

PART 2

ASSESSMENTS, RETURNS AND ITIS

2 Articles 16 amended

In Article 16 after paragraph (4) there shall be inserted the following paragraph –

“(4A) A person required by a general or particular notice to deliver a statement who may be chargeable, for the period specified in the

notice, under Case III(f) or Case VIII of Schedule D or Article 85F on the dividends, distributions or profits of a company or on a shareholder loan shall furnish, in support of the statement, a copy of the company's accounts for the financial period to which the liability relates."

3 Article 17A amended

In Article 17A –

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

“(a) in the case of –

(i) a statement delivered on behalf of the person by another person whose business or profession includes the preparation of such statements and in the course of that other person's business or profession, or

(ii) a statement delivered by a company in respect of its own charge to tax,

6 pm on the last Friday in July in the year next following the year of assessment to which the statement relates;”;

(b) for paragraph (3) there shall be substituted the following paragraph –

“(3) Paragraph (1) shall not apply to an individual who is not liable to pay any tax for the period to which the statement relates.”;

(c) in paragraph (4) –

(i) for the words “a person” there shall be substituted the words “an individual”,

(ii) in sub-paragraph (a) for the words “the person's” there shall be substituted the words “the individual's”,

(iii) in sub-paragraph (b) for the words “the person” in each place that they appear, there shall be substituted the words “the individual”.

4 Article 24 amended

In Article 24, after paragraph (1) there shall be inserted the following paragraph –

“(1A) A person chargeable who does not furnish any documents or information required, under Article 16(4A) or 16A, in support of a statement shall be taken, for the purposes of paragraph (1)(b), to have failed to deliver a full and proper statement.”.

5 Articles 41C and 41H amended

(1) In Article 41C, after paragraph (7) there shall be inserted the following paragraphs –

“(7A) Where it appears to the Comptroller that the issue of a revised rate in accordance with paragraph (7) would be insufficient to recover,

in the remainder of the payment year, the employee's outstanding liability to tax for the year of assessment or any preceding year, the Comptroller may –

- (a) in accordance with paragraph (7B), determine a revised rate applicable to the employee; and
- (b) issue a notice, in writing, to the employee and the employee's employer, of the rate and the day from which the rate applies.

(7B) Subject to paragraph (9), the rate determined shall be the rate required to recover, in the period commencing on the day the notice has effect to the end of the payment year, the balance of the revised sum of L in paragraph (2) that has not been recovered in the part of the payment year preceding that period.”.

(2) In Article 41H, after paragraph (10)(a) there shall be inserted the following sub-paragraph –

“(aa) in Article 41C(7A) for the words ‘liability to tax for the year of assessment or any preceding year’ there shall be substituted the words ‘estimated liability to tax for the payment year or liability to tax for any preceding year’;”.

PART 3

SCHEDULE A

Taxation of quarrying, etc.

6 Article 51 amended

After Article 51(1)(b) there shall be added the following sub-paragraph –

“(c) the annual profits or gains arising or accruing from the trade of the exploitation of land in Jersey by the exploration, excavation, excision, extrication, extirpation, exsiccation, expropriation or extraction or recovery of stone, minerals and other inorganic solid materials.”.

7 Article 54A amended

(1) At the end of the heading to Article 54A there shall be added the words “or quarrying, etc.”.

(2) In Article 54A after the words “Article 51(1)(b)” there shall be inserted the words “or (c)”.

8 Article 55 amended

For Article 55(2) there shall be substituted the following paragraph –

- “(2) Articles 74 to 76A shall apply to taxation under Schedule A pursuant to Article 51(1)(b) or (c) as they apply to the taxation of any trade under Schedule D Case 1.”.

9 Article 55A amended

- (1) At the end of the heading to Article 55A there shall be added the words “and quarrying, etc.”.
- (2) In Article 55A after the words “Article 51(1)(b)” there shall be inserted the words “or (c)”.

10 Article 62A substituted

For Article 62A there shall be substituted the following Article –

“62A Disapplication of Schedule D where trade taxed under Schedule A

Notwithstanding Article 61(1) and Article 62(1) Case I, tax under Schedule D shall not be charged on any profits or gains of a trade that are charged to tax under Schedule A by virtue of Article 51(1)(b) or (c).”.

11 Article 131 amended

In Article 131(1) for the words “on the trade of property development pursuant to Article 51(1)(b)” there shall be substituted the words “under Article 51(1)(b) or (c)”.

12 Miscellaneous amendments

In the following provisions, after the words “Article 51(1)(b)” there shall be inserted the words “or (c)” –

- (a) Article 3(1), in sub-paragraph (c) of the definition “earned income”;
- (b) Article 16(4);
- (c) Article 22(3);
- (d) Article 51A(2);
- (e) Article 92B(5), in the definition “qualifying income”;
- (f) Article 107A(1);
- (g) Article 108(1).

Non-resident landlords

13 Schedule 3A amended

In Schedule 3A –

- (a) in paragraph 3 –

- (i) at the end of sub-paragraph (1) there shall be added the words “or, if a notice has been issued under sub-paragraph (3A), at the rate specified in the notice”,
- (ii) after sub-paragraph (3) there shall be inserted the following sub-paragraphs –

“(3A) If the non-resident has been assessed to, but has not paid tax on, income in Jersey for any preceding year, the Comptroller may, for the purpose of collection of that tax, issue a written notice to the agent, specifying a rate of tax exceeding the standard rate but not exceeding –

- (a) in a case where the non-resident has arrears for one year of assessment, 25%;
- (b) in a case where the non-resident has arrears of tax for 2 years of assessment, 30%;
- (c) in a case where the non-resident has arrears of tax for 3 or more years of assessment, 35%.

(3B) The Comptroller shall send a copy of a notice issued under sub-paragraph (3A) to the non-resident at the address provided by the agent in accordance with paragraph 2(3)(b) or, if none has been provided, at the address of the property in Jersey.”;

(b) in paragraph 4 –

- (i) at the end of sub-paragraph (2) there shall be added the words “or, if a notice has been issued under sub-paragraph (3A), at the rate specified in the notice”,
- (ii) after sub-paragraph (3) there shall be inserted the following sub-paragraphs –

“(3A) If the non-resident has been assessed to, but has not paid tax on, income in Jersey for any preceding year, the Comptroller may, for the purpose of collection of that tax, issue a written notice to the tenant, specifying a rate of tax exceeding the standard rate but not exceeding the maximum rate that would apply in the non-resident’s case by virtue of paragraph 3(3A).

(3B) The Comptroller shall send a copy of a notice issued under sub-paragraph (3A) to the non-resident at the address provided by the tenant in accordance with sub-paragraph (5) or, if none has been provided, at the address of the property in Jersey.”;

(c) after paragraph 4 there shall be inserted the following paragraph –

“4A Power of Comptroller to direct tenant to account for tax

(1) This paragraph applies where –

- (a) rent in respect of property in Jersey is not received by an agent on behalf of a non-resident; and
- (b) the tenant is liable to pay the non-resident or another person on behalf of the non-resident (other than an agent) rent of £25,000 per annum or less or, where the tenancy is for less

than a year, the proportionate amount of that sum, which is determined by the duration of the tenancy in that year.

- (2) The tenant, when directed to do so by a written notice issued by the Comptroller, shall, before paying rent to the non-resident or another person on behalf of the non-resident, deduct from the rent, and retain, tax at the standard rate or such higher rate as is specified in the notice in accordance with sub-paragraph (3).
 - (3) If the non-resident has been assessed to, but has not paid, tax on income in Jersey for any year preceding the year in which the notice is issued, the Comptroller may, for the purpose of collecting that tax, specify in the notice a rate exceeding the standard rate but not exceeding the maximum rate that would apply in the non-resident's case by virtue of paragraph 3(3A).
 - (4) The Comptroller shall send a copy of a notice issued under sub-paragraph (2) to the non-resident at the address provided by the tenant in accordance with paragraph 4(5) as applied by sub-paragraph (5) of this paragraph or, if none has been provided, at the address of the property in Jersey.
 - (5) Sub-paragraphs (4) to (13) of paragraph 4 shall apply for the purposes of this paragraph as if any reference in them to the deduction and retention of monies pursuant to sub-paragraph (2) of that paragraph was a reference to the deduction and retention of monies pursuant to sub-paragraph (2) of this paragraph.”;
- (d) in paragraph 6(1) after the words “paragraph 4” there shall be inserted the words “or 4A”;
- (e) for paragraph 8 there shall be substituted the following paragraphs –

“8 Treatment of amounts remitted to Comptroller and recovery of arrears

- (1) Subject to sub-paragraph (2), the Comptroller shall receive an amount remitted under paragraph 3(8) or 4(8) or an amount proved to have been deducted, by virtue of paragraph 3(11) or 4(11), as a payment of tax by the non-resident for the year of assessment for which the non-resident is charged under Schedule A in respect of the rent pursuant to Article 51A(1).
- (2) Where an amount remitted under paragraph 3(8) or 4(8), or proved to have been deducted by virtue of paragraph 3(11) or 4(11), is greater than the tax payable by the non-resident as described in sub-paragraph (1), the excess shall be applied towards the payment of the non-resident's liability to tax, whether under Schedule A or Schedule D, for any earlier year of assessment.
- (3) References in sub-paragraphs (1) and (2) to sub-paragraphs (8) and (11) of paragraph 4 include those sub-paragraphs as applied by paragraph 4A(5).
- (4) The fact that the Comptroller has issued a notice under paragraph 3(3A) or 4(3A) or a notice under paragraph 4A(2) specifying a rate higher than the standard rate shall not prevent the

Comptroller pursuing, by any other means, the recovery of tax on income in Jersey that is due from the non-resident for any year preceding the year in which the notice is issued.

8A Right of appeal

- (1) A non-resident aggrieved by a notice issued under paragraph 3(3A) or 4(3A) or a notice under paragraph 4A(2) specifying a rate higher than the standard rate may appeal to the Commissioners, on giving notice in writing to the Comptroller within 40 days of the issue of the notice.
- (2) The rate specified in the notice issued under paragraph 3(3A), 4(3A) or 4A(2) shall apply notwithstanding that an appeal is pending under sub-paragraph (1).
- (3) Save as provided in sub-paragraphs (1) and (2), Part 6 shall apply, with the necessary modifications, as it applies to an appeal against any assessment.”.

PART 4

SCHEDULE D

Pensions, annuities, etc.

14 Article 3 amended

In Article 3(1) –

- (a) after the definition “accounting date” there shall be inserted the following definition –
 - “ ‘annuity equivalent’ has the meaning given in Article 131CA(1)(a);”;
- (b) in the definition “earned income” the words “and” shall be deleted at the end of sub-paragraph (b) and added after sub-paragraph (c) together with the following sub-paragraph –
 - “(d) any other payment required by any provision of this Law to be treated as or deemed to be earned income;”.

15 Article 62 amended

In Article 62(1), in Case II, the word “and” shall be deleted at the end of sub-paragraph (b) and added after sub-paragraph (c) together with the following sub-paragraph –

- “(d) annuity equivalents;”.

16 Article 87 amended

In Article 87(1) –

- (a) in sub-paragraph (a) after the word “annuity” there shall be inserted the words “, annuity equivalent”;
- (b) in the full-out words, for the words “in the case of an annuity,” there shall be substituted the words “in the case of an annuity or annuity equivalent,”.

17 Article 131B amended

In Article 131B –

- (a) in paragraph (3)(d) the words “if the individual were to retire at that date” shall be deleted;
- (b) for paragraph (3)(e) and (f) there shall be substituted the following sub-paragraphs –
 - “(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 would otherwise commence by reason of his or her serious ill health, as defined in the contract;
 - (f) the individual may 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 the annuity to him or her would otherwise commence if –
 - (i) the individual has attained the age of 60 years, and
 - (ii) the aggregate of –
 - (A) the value of the fund at the time of the election, and
 - (B) all lump sums that the individual has previously elected to receive under this sub-paragraph, under Article 131CA(4)(g) or under Article 5(2D) of the Income Tax (Superannuation Funds) (Jersey) Order 1972², does not exceed £30,000;”;
- (c) in paragraph (3)(g) for the words “after his or her retirement,” there shall be substituted the words “after the commencement of benefits,”;
- (d) in paragraph (8C) for the word “retirement” there shall be substituted the words “the commencement of benefits”;
- (e) after paragraph (10) there shall be added the following paragraph –
 - “(11) For the purposes of paragraphs (3)(g) and (8C) benefits commence upon whichever is the earlier of –
 - (a) an election by the individual who made the contract to receive a lump sum by way of commutation of part of the fund;

- (b) the commencement of payment of the annuity to the individual who made the contract.”.

18 Article 131CA amended

In Article 131CA –

- (a) in paragraph (3)(d)(ii) the words “if the individual were to retire at that date” shall be deleted;
- (b) for paragraph (4)(f) and (g) there shall be substituted the following sub-paragraphs –
 - “(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 would otherwise commence by reason of his or her serious ill health, as defined in the scheme;
 - (g) 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 would otherwise commence if –
 - (i) he or she has attained the age of 60 years, and
 - (ii) the aggregate of –
 - (A) the value of the fund at the time of the election, and
 - (B) all lump sums that the individual has previously elected to receive under this sub-paragraph, under Article 131B(3)(f) or under Article 5(2D) of the Income Tax (Superannuation Funds) (Jersey) Order 1972, does not exceed £30,000;”;
- (c) in paragraph (4)(h) for the words “to one or more secondary beneficiaries if a primary beneficiary dies following his or her retirement,” there shall be substituted the words “to the secondary beneficiary if the primary beneficiary dies following the commencement of benefits;”;
- (d) in paragraph (9) –
 - (i) for the words “after commencement of an annuity equivalent to the primary beneficiary,” there shall be substituted the words “after the commencement of benefits;”;
 - (ii) the words “subject to paragraph (9A)” shall be deleted;
- (e) in paragraph (9A) –
 - (i) after the words “to the secondary beneficiary” there shall be inserted the words “, or to the primary beneficiary’s estate;”;
 - (ii) for the word “retirement” there shall be substituted the words “the commencement of benefits”;
- (f) after paragraph (13) there shall be added the following paragraph –

“(14) For the purposes of paragraphs (4)(h), (9) and (9A) benefits commence upon whichever is the earlier of –

- (a) an election by the primary beneficiary to receive a lump sum by way of commutation of part of the fund;
- (b) the commencement of payment of annuity equivalents to the primary beneficiary.”.

Deemed dividends and full attribution

19 Articles 81B and 81N amended

- (1) In Article 81B(1) for the definition “relevant dividend” there shall be substituted the following definition –

“ ‘relevant dividend’ means, in relation to the relevant profits of a financial period of a company, so much of any dividend as is paid or issued out of those profits, in respect of a share comprised in the ordinary share capital of the company, on or before –

- (a) if the last day of the following financial period is 31st December, that day; or
- (b) in any other case, 31st December next after the end of the following financial period;”.

- (2) In Article 81N(1) for sub-paragraph (b) there shall be substituted the following sub-paragraph –

“(b) a dividend that is not a relevant dividend is paid or issued out of those profits, in respect of a share comprised in the ordinary share capital of the company.”.

20 Article 85F and Article 85H amended

- (1) In Article 85F –

- (a) in paragraph (8) for the words “Subject to paragraphs (10), (11) and (12),” there shall be substituted the words “Subject to paragraphs (10) to (12) and (12A),”;
- (b) in paragraph (12) after the word “shall” there shall be inserted the words “, subject to paragraph (12A),”;
- (c) after paragraph (12) there shall be inserted the following paragraph –

“(12A) There shall be deducted from the portion of the company’s relevant profits of a financial period on which an individual is assessed and taxed, whether the portion is determined in accordance with paragraph (8) or an election under paragraph (10), the sum of the dividends paid or issued out of those relevant profits to the individual on or before –

- (a) if the last day of the financial period is 31st December, that day; or

- (b) in any other case, 31st December next after the end of the financial period,
in respect of shares comprised in the ordinary share capital of the company that are owned by the individual.”.

(2) For Article 85H there shall be substituted the following Article –

“85H Credit for tax on full attribution

An individual who has paid tax on his or her portion of a company’s relevant profits for a financial period, pursuant to Article 85F, shall be entitled to a credit, not exceeding the amount of tax paid, against his or her liability to pay tax on any dividend that –

- (a) is paid or issued out of those relevant profits in respect of a share comprised in the ordinary share capital of the company; and
- (b) is not deducted, by virtue of Article 85F(12A), in determining that portion.”.

21 Articles 81FA, 81FB, 81GA, 81GB and 85FA inserted

(1) After Article 81F there shall be inserted the following Articles –

“81FA Election on disposal of whole of shareholding: Jersey trading companies

- (1) This Article applies where –
 - (a) the whole of the ordinary share capital of a Jersey trading company is disposed of; and
 - (b) the disposal occurs on a day other than the last day of a financial period of the company.
- (2) The person or persons disposing of the shares and the person or persons acquiring the shares may jointly elect, in writing, for Articles 81E and 81F to apply as if the portion of the financial period ending on the day of the disposal and the remainder of the financial period, were separate financial periods.
- (3) An election under paragraph (2) must be made no later than 90 days after the end of the financial period in which the disposal occurs.

81FB Disposal of shareholding pursuant to court order: Jersey trading companies

- (1) This Article applies where –
 - (a) a court or tribunal orders the disposal of shares comprised in the ordinary share capital of a Jersey trading company by or to an individual to whom, whether immediately before or by virtue of the disposal, Article 81D applies; and

- (b) the disposal occurs on a day other than the last day of a financial period.
- (2) The court or tribunal may order that Articles 81E and 81F shall apply as if an election had been made under Article 81FA(2).”.
- (2) After Article 81G there shall be inserted the following Articles –

“81GA Election on disposal of whole of shareholding: Jersey financial services companies

- (1) This Article applies where –
 - (a) the whole of the ordinary share capital of a Jersey financial services company is disposed of; and
 - (b) the disposal occurs on a day other than the last day of a financial period of the company.
- (2) The person or persons disposing of the shares and the person or persons acquiring the shares may jointly elect, in writing, for Article 81G to apply as if the portion of the financial period ending on the day of the disposal and the remainder of the financial period, were separate financial periods.
- (3) An election under paragraph (2) must be made no later than 90 days after the end of the financial period in which the disposal occurs.

81GB Disposal of shareholding pursuant to court order: Jersey financial services companies

- (1) This Article applies where –
 - (a) a court or tribunal orders the disposal of shares comprised in the ordinary share capital of a Jersey financial services company by or to an individual to whom, whether immediately before or by virtue of the disposal, Article 81G applies; and
 - (b) the disposal occurs on a day other than the last day of a financial period.
- (2) The court or tribunal may order that Article 81G shall apply as if an election had been made under the Article 81GA(2).”.
- (3) After Article 85F there shall be inserted the following Article –

“85FA Disposal of shareholding pursuant to court order: full attribution

- (1) This Article applies where –
 - (a) a court or tribunal orders the disposal of shares comprised in the ordinary share capital of a company subject to full attribution by or to an individual to whom, whether immediately before or by virtue of the disposal, Article 85F applies; and

- (b) the disposal occurs on a day other than the last day of a financial period.
- (2) The court or tribunal may order that Article 85F shall apply as if the portion of the financial period ending on the day of the disposal and the remainder of the financial period were separate financial periods.”.

22 Article 82B amended

After Article 82B(2) there shall be inserted the following paragraph –

- “(2A) Notwithstanding paragraph (2) the individual may be assessed and taxed if the trustees do not comply with any requirement imposed by or under this Law.”.

Taxation of importation and supply of hydrocarbon oils

23 Article 123CAA inserted

After Article 123C there shall be inserted the following Article –

“123CAA Exception for profits of importation and supply of hydrocarbon oil

- (1) Notwithstanding Article 123C(2), the annual profits or gains of a company to which Article 123C applies which arise from the trade of importing and supplying hydrocarbon oil shall be taxed at the standard rate.
- (2) Notwithstanding Article 123C(2), where a company to which Article 123C applies and which carries on the trade of importing and supplying hydrocarbon oil (the ‘importing company’) supplies the oil to another company which is –
 - (a) a company to which Article 123C applies; and
 - (b) a subsidiary of, or connected with, the importing company,
 the annual profits or gains of that other company which arise from the trade of supplying hydrocarbon oil shall be taxed at the standard rate.
- (3) In this Article ‘hydrocarbon oil’ means any petroleum oil, coal tar or oil produced from coal, shale, peat or any other bituminous substance, or any liquid hydrocarbon, except any hydrocarbon or bituminous or asphaltic substance as is –
 - (a) solid or semi-solid at a temperature of 15 degrees Celsius; or
 - (b) gaseous at a temperature of 15 degrees Celsius and under a pressure of 1013.25 millibars,
 that is ordinarily used as fuel for the propulsion of any vehicle, vessel or aircraft or as boiler or furnace fuel.”.

PART 5
CLOSING PROVISION

24 Citation and commencement

- (1) This Law may be cited as the Income Tax (Amendment No. 37) (Jersey) Law 201-.
- (2) Subject to paragraphs (3) and (4), this Law shall come into force on 1st January 2011.
- (3) The following Articles shall have effect for the year of assessment 2011 and ensuing years –
 - (a) Articles 6, 7, 8, 9, 10, 11 and 12;
 - (b) Articles 19, 20 and 21.
- (4) Article 23 shall have effect for the year of assessment 2012 and ensuing years.

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- ¹ *chapter 24.750*
² *chapter 24.750.60*