

STATES OF JERSEY

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DRAFT INCOME TAX (AMENDMENT No. 25) (JERSEY) LAW 200-

**Lodged au Greffe on 1st November 2005
by the Finance and Economics Committee**

STATES GREFFE



Jersey

DRAFT INCOME TAX (AMENDMENT No. 25) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Finance and Economics Committee has made the following statement –

In the view of the Finance and Economics Committee the provisions of the Draft Income Tax (Amendment No. 25) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

REPORT

This draft Law gives effect to the proposals described in paragraph 10.6 of the 2006 Budget Book.

Details of the financial and manpower implications may also be found in the 2006 Budget Book.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee 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). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 20th October 2005 the Finance and Economics Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Finance and Economics Committee the provisions of the Draft Income Tax (Amendment No. 25) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

Part 1 - Preliminary

Article 1 is the interpretation provision.

Part 2 - International Business Companies

Article 2 amends Article 123B of the principal Law so that the taxation benefits afforded by it are not available to companies which become resident in Jersey on or after 1st January 2006.

Part 3 - Non-residents' pensions

The amendments in this Part expand the category of non-residents' pension plans that enjoy exemption from Jersey income tax.

Presently, to qualify for exemption under Article 131C of the principal Law, a pension plan must be written by a company carrying on life-insurance business in Jersey and be approved by the Comptroller of Income Tax.

The amendments would extend the exemption to a pension plan that does not involve life insurance, but is –

- (a) written under an irrevocable trust that is established under Jersey law and administered in Jersey; and
- (b) approved by the Comptroller.

The amendments also make standard provision for appeals to Commissioners of Appeal against decisions by the Comptroller concerning approvals under Article 131C.

Part 4 - Income Tax Instalment System

Article 7 amends Article 41C of the principal Law to the effect that if, for the purposes of the income tax instalment system, the Comptroller issues notice of a provisional rate applicable to an employee's income, the Comptroller must also send the notice to the employee's employer.

Article 8 amends Article 42 of the principal Law so as to clarify when civil proceedings may be commenced for the recovery of overdue instalments of tax. Proceedings may be commenced against the taxpayer to recover an interim instalment due under Article 41A of the principal Law at any time after the amount of the instalment has finally been determined in accordance with that Article. Proceedings may be commenced against an employer or building contractor to recover an unpaid monthly instalment under the income tax instalment system at any time after the instalment has fallen due. The opportunity is also taken to remove an otiose reference to the commencement of proceedings in term or in vacation, as there is now a general provision in rules of court enabling the commencement of proceedings in vacation.

Part 5 - Late filing penalty and late payment surcharge

Articles 9 and 10 have the effect that penalties paid to the Comptroller for the late filing of a statement and surcharges paid to the Comptroller for the late payment of a tax liability are no longer kept by the Comptroller to meet costs within the Income Tax Department but are instead paid into the general revenue of the States.

Article 11 relates to any outstanding liabilities to pay a surcharge for late payment of tax in respect of the years of assessment 1998 and 1999. As the principal Law was in force for those years, the liability was compounded for every subsequent year that the tax was not paid. From the year of assessment 2000, such a liability was not compounded on a yearly basis. This amendment has the effect that any surcharge remaining unpaid from 1998 and 1999 shall not be compounded.

Part 6 - Appointment and removal of Comptroller

Articles 13 and 14 repeal provisions whereby the appointment of the Comptroller of Income Tax is subject to the approval of the States and his or her removal from office would be decided by the States.

Part 7 - Closing

Article 16 provides for the citation of the Law.



Jersey

DRAFT INCOME TAX (AMENDMENT No. 25) (JERSEY) LAW 200-

Arrangement

Article

PART 1

PRELIMINARY

1 Interpretation

PART 2

INTERNATIONAL BUSINESS COMPANIES

2 Article 123B amended

PART 3

NON-RESIDENTS' PENSIONS

3 Article 115 amended

4 Article 131C amended

5 Schedule 5 amended

6 Commencement of Part 3

PART 4

INCOME TAX INSTALMENT SYSTEM

7 Article 41C amended

8 Article 42 amended

PART 5

LATE FILING PENALTY AND LATE PAYMENT SURCHARGE

9 Article 17A amended

10 Article 41I amended

11 Schedule 5 amended

12 Commencement of Part 5

PART 6

APPOINTMENT AND REMOVAL OF COMPTROLLER

13 Article 6 amended

14 Article 7 amended

15 Commencement of Part 6

PART 7

CLOSING

16 Citation



Jersey

DRAFT INCOME TAX (AMENDMENT No. 25) (JERSEY) LAW 200-

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

PRELIMINARY

1 Interpretation

In this Law “principal Law” means the Income Tax (Jersey) Law 1961.^[1]

PART 2

INTERNATIONAL BUSINESS COMPANIES

2 Article 123B amended

(1) In Article 123B(5) of the principal Law after sub-paragraph (a) there shall be inserted the following sub-paragraph –

“(aa) becomes resident in Jersey (or, in the case of the branch of a non-resident company, commences trading) on or after 1st January 2006;”.

(2) This Article shall have effect for the year of assessment 2006 and ensuing years.

PART 3

NON-RESIDENTS’ PENSIONS

3 Article 115 amended

After Article 115(fa) of the Law there shall be inserted the following paragraph –

“(faa) any income derived from investments or deposits of a contract approved under Article 131C(1)(b);”.

4 Article 131C amended

(1) For Article 131C(1) of the Law there shall be substituted the following paragraph –

“(1) The Comptroller may approve a retirement annuity contract made by an individual who is not resident in Jersey and whose employment, trade or profession, if any, is exercised outside Jersey –

- (a) if the contract is with a company carrying on business through a branch in Jersey, and carrying on in Jersey the business of granting annuities on human life; or
- (b) if the contract has for its sole purpose the provision of retirement benefits for the individual and is made under an irrevocable trust established under the law of Jersey and administered in Jersey.”.

(2) At the end of Article 131C of the Law there shall be inserted the following paragraphs –

“(5) Any person who is aggrieved by a condition imposed by the Comptroller on, or by the refusal by the Comptroller of the Comptroller’s approval of, a contract under this Article shall be entitled to appeal to the Commissioners on giving the Comptroller notice in writing, stating the grounds of appeal, within 21 days of the date of the Comptroller’s decision.

(6) The provisions of Part 6 shall apply in the case of an appeal under paragraph (5) as they apply in the case of an appeal from an assessment made by the Comptroller, with such adaptations as may be necessary.”.

5 Schedule 5 amended

After paragraph 3 of Schedule 5 to the principal Law there shall be added the following paragraph –

“4 Income Tax (Amendment No. 25) (Jersey) Law 200-: saving provision for Article 131C

A retirement annuity contract that was, immediately before the amendment of Article 131C by the Income Tax (Amendment No. 25) (Jersey) Law 200, the subject of an approval under paragraph (1) of that Article shall be taken to have been approved by the Comptroller under Article 131C(1)(a) as in force immediately after that amendment, but nothing in this paragraph shall prevent the withdrawal of that approval in accordance with this Law nor affect any condition to which that approval was subject immediately before that amendment.”.

6 Commencement of Part 3

This Part shall have effect for the year of assessment 2006 and ensuing years.

PART 4

INCOME TAX INSTALMENT SYSTEM

7 Article 41C amended

In Article 41C(4) of the principal Law after the words “the employee” there shall be inserted the words “and the employee’s employer,”.

8 Article 42 amended

In Article 42 of the principal Law –

- (a) in paragraph (1) the words “, either in term or in vacation,” shall be deleted;
- (b) after paragraph (1) the following paragraphs shall be inserted –

“(1A) Notwithstanding paragraph (1), proceedings for the recovery of an instalment of income tax due under Article 41A may be instituted by the Treasurer of the States at any time after the amount of the instalment has been finally determined in accordance with that Article.

(1B) Proceedings for the recovery of monies due under Article 41B(5) or 41E(5) may be instituted by the Treasurer of the States at any time after the monies fall due.”.

PART 5

LATE FILING PENALTY AND LATE PAYMENT SURCHARGE

9 Article 17A amended

In Article 17A of the principal Law, paragraph (13) shall be repealed.

10 Article 41I amended

In Article 41I of the principal Law, paragraph (9) shall be repealed.

11 Schedule 5 amended

- (1) For the heading to Schedule 5 there shall be substituted the heading “Savings, transitional and similar provisions: general”.
- (2) In Schedule 5, after paragraph 2 there shall be inserted the following paragraph-

“2A Income Tax (Amendment No. 24) (Jersey) Law 2005: partial release of liability under Article 26

Notwithstanding Article 17(2) of the Interpretation (Jersey) Law 1954,^[2] any liability incurred by a person under Article 26 in respect of the years of assessment 1998 and 1999 and remaining outstanding when this paragraph comes into force shall be determined as if, in paragraph (1) of that Article, as it had effect in relation to those years, the words “and the anniversary of that day in all ensuing years” were omitted.”.

12 Commencement of Part 5

This Part shall come into force on 1st January 2006.

PART 6

APPOINTMENT AND REMOVAL OF COMPTROLLER

13 Article 6 amended

In Article 6 of the principal Law, paragraph (2) shall be repealed.

14 Article 7 amended

Article 7 of the principal Law shall be repealed.

15 Commencement of Part 6

This Part shall come into force 7 days after this Law is registered.

PART 7

CLOSING

16 Citation

This Law may be cited as the Income Tax (Amendment No. 25) (Jersey) Law 200.

[1] Chapter 24.750.

[2] Chapter 15.360.