

STATES OF JERSEY

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DRAFT INCOME TAX (AMENDMENT No. 27) (JERSEY) LAW 200-

**Lodged au Greffe on 5th December 2006
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT INCOME TAX (AMENDMENT No. 27) (JERSEY) LAW 200-

European Convention on Human Rights

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. 27) (Jersey) Law 200 are compatible with the Convention Rights.

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

REPORT

This proposition replaces and revises the proposition P132/2006/Amnd lodged by the Minister for Economic Development on 21 November 2006 and subsequently withdrawn. The proposition, if supported, would allow Jersey companies to be non-resident in Jersey for tax purposes if they meet certain criteria.

At present, many Jersey companies are exempt companies. Such companies pay an annual fee to the Comptroller of Income Tax and as a result are not, for the purposes of Jersey Law, liable in the Island for Income Tax. However, some jurisdictions take the view that exempt companies are nonetheless resident in Jersey for tax purposes, simply by virtue of the fact that the exempt company fee is regarded in some quarters as being a tax. As a result, exempt companies are not able to become solely tax resident in another jurisdiction.

The purpose of the proposition is to amend Article 123 of the Income Tax (Jersey) Law 1961 in order to permit a Jersey incorporated company that meets prescribed criteria to be regarded as non tax resident in Jersey. The proposed new Article 123 will require a Jersey company to satisfy three tests in order to be non-resident in Jersey for tax purposes –

- (i) the management and control of the company must take place in another country or territory;
- (ii) the highest rate at which companies may be charged to tax on their income in that place is 20% or higher; and
- (iii) the company is resident for tax purposes there.

These changes ensure that a Jersey company cannot seek to move its management and control to a zero tax jurisdiction in order to avoid Jersey income tax. However, it permits Jersey companies to become tax resident for bona fide commercial reasons in jurisdictions which levy significant levels of corporate taxation, and thus will permit Jersey companies to be used in a wider range of transactions than is currently the case.

As the presence of the exempt company fee leads some to regard exempt companies as tax resident in Jersey, it is vital that non-resident companies are not liable to any fee payable to the Comptroller. However, as exempt companies will be phased out as part of the zero/ten legislation, and as such companies have already paid their 2007 fee, this is not of material concern, and the risk of a loss of income from existing exempt companies seeking to become non-resident is minimal. Indeed, the proposed change should be of little effect to existing Jersey companies, but should play an important role in attracting new companies to the Island.

There are many reasons why a Jersey company might wish to become tax resident in another jurisdiction. Investors in a jurisdiction may face obstacles if they wish to invest directly in certain classes of assets, whereas such restrictions would not apply to investing in a Jersey company that was tax resident in the investors' home jurisdiction. For example, US residents seeking to invest in UK real property face several hurdles: they could, however, invest easily in a US tax resident Jersey company investing in UK real property.

The Island has a vibrant funds industry that will also benefit from this change. A Jersey company that is tax resident in the UK will be able to act in a wider range of transactions than at present, for certain UK structures require a UK tax resident company at their heart. Currently, when a structure requires a non-UK incorporated but UK tax resident company, a Cayman Islands company is invariably used. The amendment will permit Jersey companies to compete on a level playing field with the Cayman Islands. This is particularly important in the funds sector, where UK tax residency can be a decisive factor in being eligible for certain favourable UK tax treatments.

While it is difficult to estimate the value of work that could be attracted to the Island as a result of this change, it will certainly be of material assistance in helping to ensure that Jersey preserves its market position in sectors of the finance industry which accounted for over £100m in economic activity last year. It will also open up new business opportunities by allowing Jersey for the first time to compete on a level playing field with competitor jurisdictions.

In proposing this amendment I have sought the advice of the Comptroller of Income Tax, who is satisfied that, on balance, the potential increase in indirect tax revenue from finance industry businesses and employees engaged in servicing non-domiciled vehicles outweighs any risk of losses to the Comptroller arising from the change in legislation.

Financial and manpower statement

There are no financial or manpower consequences arising from the proposal.

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 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). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 5th December 2006 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. 27) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

This draft Law would amend the Income Tax (Jersey) Law 1961 so as to revise the circumstances in which a company is regarded as resident in Jersey for the purposes of taxation. Currently, all companies incorporated in Jersey are regarded as resident here. The amendment would create an exception to that rule in the case of a company which, although incorporated in Jersey, is both managed and controlled in a jurisdiction where a rate of tax of 20% or higher applies to a company's income (whether to the whole or only part of such income) and regarded as resident in that jurisdiction.

The amendment would have effect for the year of assessment 2007 and ensuing years.



Jersey

DRAFT INCOME TAX (AMENDMENT No. 27) (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 –

1 Article 123 amended

For paragraph (1) of Article 123 of the Income Tax (Jersey) Law 1961^[1] there shall be substituted the following paragraph –

“(1) Except as provided in Article 123A –

- (a) a company incorporated under the Loi (1861) sur les Sociétés à Responsabilité Limitée or the Companies (Jersey) Law 1991^[2] shall be regarded as resident in Jersey unless –
 - (i) its business is centrally managed and controlled outside Jersey in a country or territory where the highest rate at which any company may be charged to tax on any part of its income is 20% or higher, and
 - (ii) the company is resident for tax purposes in that country or territory;
- (b) a company incorporated outside Jersey shall be regarded as resident in Jersey if its business is managed and controlled in Jersey.”.

2 Citation and years of assessment for which Law has effect

This Law may be cited as the Income Tax (Amendment No. 27) (Jersey) Law 200- and shall have effect for the year of assessment 2007 and ensuing years.

[1]

chapter 24.750

[2]

chapter 13.125