

STATES OF JERSEY

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DRAFT TAXATION (IMPLEMENTATION) (JERSEY) LAW 200

**Lodged au Greffe on 22nd June 2004
by the Policy and Resources Committee**

STATES GREFFE



Jersey

DRAFT TAXATION (IMPLEMENTATION) (JERSEY) LAW 200

European Convention on Human Rights

The President of the Policy and Resources Committee has made the following statement –

In the view of the Policy and Resources Committee the provisions of the Draft Taxation (Implementation) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

REPORT

1. Members will recall that the States have been asked to approve a Report and Proposition of the Committee (P.97/2004) on 2 Model Agreements on Taxation of Savings Income as the basis of bilateral agreements to be entered into with each of the 25 Member States of the European Union.
2. Members will further recall that in paragraph 24 of the Committee's report it is stated that –

“Legislation will need to be enacted to provide for the retention tax to be applied to those who are to be subject to the tax. Provision will also need to be made for the exchange of information where those subject to the retention tax decide to take advantage of the voluntary disclosure arrangements referred to in paragraph 22 above. Subject to their approval of the Model Agreements, and the satisfying of the conditions in Article 17 of those Agreements, the States will be asked to approve an enabling Law that will provide for Regulations to be made implementing international obligations and agreements with the Governments of other countries and territories regarding or relating to taxation. The intention is that the enabling Law will be presented to the States for debate in July, and Regulations will be presented in September/October if the conditions set out in Article 17 of the Directive and of the Model Agreements have been satisfied and it is confirmed that the 1st January 2005 is the operative date and that all of the EU Member States, the named third countries and the relevant dependent and associated territories of the member States are in compliance with the provisions of Article 17.”
3. Subject to the States approval of the 2 Model Agreements as the basis for bilateral agreements on taxation of savings income to be entered into with each of the 25 Member States of the EU, the Committee would wish to press ahead with the enactment of an enabling Law. This is necessary because currently provision is made within the Agreements for the obligations to be entered into on 1st January 2005, if certain conditions referred to in paragraph 2 above are met. A later date may be proposed by the EU because the Swiss, who are one of the named third countries, have indicated that they will be unable to meet the 1st January 2005 implementation date. Such a decision is expected to be taken by the EU before the end of June following further discussions between the EU and the Swiss authorities, and before the States are to be asked to debate a draft enabling Law. However, even in the event that there is a deferment of the implementation date, it will still be important for the Finance Industry to know what is to be expected of them at the earliest possible date, so that they can plan accordingly, and the detailed Regulations cannot be debated by the States until the enabling Law is in force. Although there have been extensive discussions with the industry on these matters, the industry have indicated that they want to have formal Regulations on which to base their decisions.
4. The Committee is therefore proposing that an enabling Law should be enacted without delay. This will enable the States to make Regulations implementing in Jersey agreements with, or obligations owed to, other countries and territories regarding taxation. It is important to note that in approving the enabling Law the States are not making provision for individual tax agreements to be brought into effect. For this to happen the States firstly must have authorised that an agreement be signed or assented to on their behalf; and secondly must have approved the Regulations required to implement the agreement.
5. To ensure that the Committee can be in a position to present Regulations to the States for consideration in September/October, as it may be considered either necessary or appropriate to do, the enabling legislation needs to be submitted to the Privy Council for approval before its summer break. To achieve this the Committee needs to request the States to debate draft enabling legislation at their meeting on 6th July.
6. The Committee had intended to lodge an enabling Law immediately following the decision by the States on P.97/2004 – assuming that the decision is taken to support the Committee's proposition. However, as it is possible that the States will not be in a position to debate P.97/2004 until 23rd June, the Committee needs to lodge the enabling Law on 22nd June, ahead of the debate on the Model Agreements, in order to have a debate on the enabling Law on 6th July. In following this course the Committee would emphasize that it is not presuming the outcome of the debate on the Model Agreements, although the Committee is conscious that the Isle of Man Government has approved the Model Agreements and the States of Guernsey are expected to do likewise when they consider the matter on 21st June on the recommendation

of their Policy Council.

7. As noted above the main reason for presenting an enabling Law, and the timing of its presentation, lies in the obligations to be entered into with the 25 EU Member States, subject to States approval. However, it will be recalled that the States on 22nd October 2002 adopted a proposition of the Policy and Resources Committee and endorsed an Agreement for the exchange of information relating to taxes between the Governments of the United States of America and the States of Jersey, annexed to the report of 23rd September 2002 of the Policy and Resources Committee, and authorised the President of the Policy and Resources Committee to sign the said Agreement on behalf of the States. The Agreement was duly signed in November 2002. In its report of 23rd September 2002 the Committee indicated that legislation would be needed to enable the obligations in the tax information exchange agreements with the United States of America to be implemented. Although the same time constraints do not apply to this matter as to the bilateral agreements with the 25 Member States of the EU, the Committee is of the opinion that it would be most appropriate for the draft enabling Law to refer generally to agreements with countries and territories regarding taxation, and not just to the agreements with the EU Member States. The Committee would emphasize however, that as with the EU Agreements, no tax information exchange agreement such as that entered into with the United States will be able to be entered into unless firstly the States have authorised it to be signed, secondly it has been signed, and thirdly it is the subject of Regulations which the States will have been asked to consider and approve at the appropriate time.

8. The States, therefore, are asked to approve the attached Draft Taxation (Implementation) (Jersey) Law 200- to enable the States to make Regulations implementing in Jersey agreements with, or obligations owed to, other countries and territories regarding taxation.

9. **Financial and manpower implications**

It is not considered that there will be any additional financial or manpower implications arising directly from the Taxation (Implementation) (Jersey) Law 200-. It is possible that there will be additional financial and manpower requirements for the States arising from Regulations made under the Law, but these are not expected to be significant and will be kept under review by the Comptroller of Income Tax. Any additional resource implications would be highlighted in any report accompanying draft Regulations for approval by the States, and would therefore be taken into account by the States at the appropriate time.

10. **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 17th June 2004 the Policy and Resources Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Policy and Resources Committee the provisions of the Draft Taxation (Implementation) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law would enable the States to make Regulations implementing in Jersey agreements with, or obligations owed to, other countries and territories regarding taxation.

Article 1 is the interpretation provision.

Article 2 is the power to make the Regulations. The power can only be exercised in relation to an agreement or obligation that the States have authorized to be signed or assented to on their behalf. The Regulations may amend any Laws, Regulations and Orders and contain any provision that could be contained in a Law.

Article 3 has the effect that no claim can be made for repayment of monies remitted to the Comptroller of Income Tax pursuant to Regulations made under Article 2, unless permitted by those Regulations.

Article 4 has the effect that information may be lawfully disclosed pursuant to a taxation agreement or obligation.

Article 5 provides that the Comptroller of Income Tax and other tax officers shall not be liable for damages for anything done, or not done, in the discharge of their functions under the Regulations, provided that they act in good faith.

Article 6 is the citation and commencement provision. The Law would come into force 7 days after it is registered in the Royal Court.



Jersey

DRAFT TAXATION (IMPLEMENTATION) (JERSEY) LAW 200

Arrangement

Article

- 1 Interpretation
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- 3 Limitation on repayments
- 4 Information
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- 6 Citation and commencement



Jersey

DRAFT TAXATION (IMPLEMENTATION) (JERSEY) LAW 200

A LAW enabling the States to make Regulations implementing agreements with, and obligations owed to, the governments of other countries and territories regarding or relating to taxation, and for connected purposes.

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 Interpretation

In this Law –

“approved agreement” means an agreement regarding or relating to taxation which the States have authorized to be signed on their behalf with the government of another country or territory;

“approved obligation” means an obligation regarding or relating to taxation which the States have authorized to be signed or assented to on their behalf;

“tax officer” means the Comptroller of Income Tax or any officer appointed under Article 8 of the Income Tax (Jersey) Law 1961;^[1]

“taxation” means taxation in Jersey and –

- (a) in relation to an approved agreement, taxation in the country or territory with whose government the agreement is signed;
- (b) in relation to an approved obligation, taxation in a country or territory to which the obligation is owed.

2 Power to implement

- (1) The States may by Regulations make such provision as appears to them to be necessary or expedient for the purposes of –
 - (a) implementing an approved agreement or approved obligation; and
 - (b) dealing with matters arising out of or related to such an agreement or obligation.
- (2) Regulations made under paragraph (1) may –
 - (a) amend any other enactment; and
 - (b) make any other provision, of any extent, as might be made by a Law passed by the States.

- (3) Without prejudice to the generality of paragraphs (1) and (2), Regulations made under paragraph (1) may contain such incidental, supplemental, transitional and saving provisions as the States consider expedient.

3 Limitation on repayments

Save as expressly provided in Regulations made under Article 2, no claim for repayment of any monies remitted to the Comptroller of Income Tax pursuant to such Regulations shall be allowed.

4 Information

- (1) No specific or general restriction on the disclosure of information imposed by any enactment or contract or otherwise shall prevent the disclosure of information to the competent authority of another country or territory pursuant to an approved agreement or approved obligation, or Regulations made under Article 2.
- (2) The reference in paragraph (1) to the competent authority of another country or territory is a reference to the authority designated in or for the purposes of an approved agreement or approved obligation as the competent authority of that country or territory.

5 Liability of tax officer

A tax officer shall not be liable in damages for anything done or omitted in the discharge of any functions under any approved agreement or approved obligation, or Regulations made under Article 2, unless it is shown that the act or omission was in bad faith.

6 Citation and commencement

This Law may be cited as the Taxation (Implementation) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

[\[1\]](#) *Volume 1961-1962, page 201.*