

STATES OF JERSEY

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DRAFT TAXATION (UNITED STATES OF AMERICA) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 8th November 2005
by the Policy and Resources Committee**

STATES GREFFE



Jersey

DRAFT TAXATION (UNITED STATES OF AMERICA) (JERSEY) REGULATIONS 200

REPORT

The States, on 22nd October 2002, unanimously endorsed the Agreement for the Exchange of Information relating to taxes between the Governments of the U.S.A. and the States of Jersey (P.172/2002), and authorised the President of the Policy and Resources Committee to sign that Agreement on behalf of the States. The Agreement was duly signed in Washington DC on 4th November 2002.

The Agreement provides for the Exchange of Information on criminal tax matters to have effect upon the entry into force of the Agreement; and for civil tax matters on the 1st January 2006. However, as information on criminal tax matters was able to be sought under existing legislation (e.g. the Investigation of Fraud Law) it was not felt necessary to promote the Regulations necessary for the bringing into force of the Agreement ahead of the need to provide for the Exchange of Information on civil tax matters.

On 7th July 2004 the States adopted the Taxation (Implementation) (Jersey) Law 2004 which Law enables the States to make Regulations implementing Agreements with, and obligations owed to, the Governments of other countries and territories regarding or relating to taxation.

The draft Taxation (United States of America) (Jersey) Regulations 200- attached to this report, if adopted, will enable the States to bring the Tax Information Exchange Agreement with the United States into force with effect from a date 7 days after the adoption of the Regulations.

The decision to enter into an Agreement with the United States in 2002 was taken on the basis that in reinforcing thereby a good relationship between Jersey and the United States this would be in the Island's best economic interests. These interests remain.

There are no additional financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

The effect of these Regulations, if adopted, will be to enable the Government of the States of Jersey to fulfil its obligations to the United States of America (so far as legislation is necessary for that purpose) under the agreement entered into by it with that country at Washington D.C. on 4th November 2002.

The agreement relates to the exchange of information relating to taxes, and was signed on behalf of the States pursuant to the authorization given by them for that purpose on 22nd October 2002.

The Regulations, which are made under Article 2 of the Taxation (Implementation) (Jersey) Law 2004, are set out in the following way.

Regulation 1 defines expressions used in the Regulations.

“Tax” means a federal tax of the United States.

“Taxpayer” means a person whose liability to pay American federal tax is under consideration or investigation.

Regulation 2 gives the Comptroller of Income Tax power to require a taxpayer to produce documents and other information or evidence in the taxpayer’s possession relating to American federal tax.

The requirement must be given by a notice in writing. However, before making it, the Comptroller must allow the taxpayer a reasonable opportunity to provide the material sought.

Ordinarily, the notice must summarize the reasons for the requirement.

Regulation 3 gives the Comptroller power to require other persons to provide documents about a taxpayer’s liability for American federal tax.

This requirement must be also made by notice in writing, and the Comptroller must first allow the person of whom it is made a reasonable opportunity to provide the material sought.

The taxpayer must be given a copy of the notice and, ordinarily, a summary of the reasons for the requirement.

Regulation 4 requires that a time for compliance must be stipulated in a notice. This must be not less than 30 days.

Regulation 5 provides that a notice under *Regulation 3* must name the taxpayer to whom it relates.

Regulation 6 gives the Comptroller power to make and retain copies and extracts of things produced in accordance with requirements made under *Regulations 2* and *3*.

Regulation 7 gives the Royal Court jurisdiction to compel a taxpayer to comply with a requirement under *Regulation 2*.

Regulation 8 gives the Royal Court jurisdiction to compel a person to comply with a requirement under *Regulation 3*.

Regulation 9 provides for information in electronic or magnetic form.

Regulation 10 provides that ordinarily a person is entitled to at least 14 days notice of any application to the Royal Court for an order under *Regulation 7* or *Regulation 8*.

Regulation 11 provides for the protection of evidence pending an application for an order under *Regulation 7* or *Regulation 8*.

Regulation 12 deals with warrants for the searching of premises and seizure of documents and evidence.

Regulation 13 deals with the disposition of seized documents and evidence.

Regulation 14 gives a taxpayer, and any other person who is required to produce documents or information about a taxpayer, a right of appeal to the Royal Court.

Regulation 15 creates offences. These include intentionally tampering with documents or evidence, and failing to comply with a requirement made by the Comptroller under the Regulations.

Regulation 16 deals with the criminal liability of parties to offences and of bodies corporate and limited liability partnerships.

Regulation 17 provides for the commencement of the Regulations. They will come into force on the seventh day after they are made.



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Arrangement

Regulation

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Jersey

DRAFT TAXATION (UNITED STATES OF AMERICA) (JERSEY) REGULATIONS 200

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, recognizing their autonomy in domestic matters including tax, and noting that by a Tax Information Exchange Agreement signed in Washington on 4th November 2002 for and on behalf of the Governments of the States of Jersey and the United States of America, Jersey has incurred obligations towards the United States that are for Jersey's performance alone, have in pursuance of Article 2 of the Taxation (Implementation) (Jersey) Law 2004,^[1] and following the decision of the States of 22nd October 2002 to adopt paragraph (a) of Projet 172 of 2002, made the following Regulations—

1 Interpretation

- (1) In these Regulations, unless the context otherwise requires –
- “information” means a fact, statement, document or record, in whatever form;
 - “possession” includes custody, and also includes control;
 - “relevant criminal offence” means an offence that is criminal by reason of any law of the United States that is designated as a criminal law, for which purpose it is immaterial whether it is contained in a tax law, in a criminal code or in any other law;
 - “tax” means a federal tax of the United States;
 - “tax information” means information that is foreseeably relevant to the administration and enforcement of the domestic laws of the United States concerning any tax, including information that is foreseeably relevant to –
 - (a) the determination, assessment, enforcement or collection of tax with respect to a person who is subject to that tax; or
 - (b) the investigation or prosecution of a criminal matter in relation to that person;
 - “taxpayer” means a person whose liability to pay tax is under examination or investigation in the United States;
 - “United States of America” and “United States” include Puerto Rico, the American Virgin Islands, Guam and any other possession or territory of the United States of America.
- (2) For the purposes of these Regulations, a person is resident in the United States if –
- (a) he or she is a citizen of the United States; or
 - (b) the person is a legal person, partnership, corporation, trust, estate, association or other entity, deriving its status as such from a law in force in the United States.
- (3) For the purposes of these Regulations, a person is resident in Jersey if the person is resident in Jersey for the purposes of the Income Tax (Jersey) Law 1961.^[2]

- (4) In this Law, a reference to a person's residential status is a reference to whether the person is resident in the United States or in Jersey or in some other place.
- (5) In these Regulations, expressions that are also used in the Income Tax (Jersey) Law 1961 have the same respective meanings as in that Law, unless the context otherwise requires.

2 Provision of information by taxpayer

- (1) The Comptroller may require a taxpayer to provide to the Comptroller –
 - (a) a document or record in the taxpayer's possession that contains or in the reasonable opinion of the Comptroller may contain tax information that is relevant to a liability to tax to which the person is subject or may be subject, or to the amount of any such liability;
 - (b) tax information within the taxpayer's knowledge or belief that the Comptroller reasonably requires as being relevant to any such liability, or to the amount of any such liability; and
 - (c) evidence within the taxpayer's possession that the Comptroller reasonably requires as being relevant to the taxpayer's residential status for the purposes of these Regulations.
- (2) A requirement under paragraph (1) shall be made by notice in writing.
- (3) Before giving a notice under this Regulation, the Comptroller shall allow the taxpayer a reasonable opportunity to provide to the Comptroller the document, record, tax information or evidence concerned.
- (4) When giving a notice under this Regulation, the Comptroller shall also give to the taxpayer a written summary of the Comptroller's reasons for the giving of the notice.
- (5) Paragraph (4) does not require the disclosure of information –
 - (a) if its disclosure would identify or might identify a person who has provided information that the Comptroller takes into account in deciding whether to give the notice;
 - (b) if the Comptroller is satisfied that there are reasonable grounds for suspecting that the taxpayer has committed a relevant criminal offence; or
 - (c) if the Comptroller is satisfied that disclosure of information of that description would prejudice the assessment or collection of tax.
- (6) A notice under this Regulation does not oblige a taxpayer to provide –
 - (a) a document or record;
 - (b) tax information; or
 - (c) evidence,relating to the conduct of a pending appeal by the taxpayer in respect of tax.
- (7) A taxpayer may comply with a notice to provide a document or record under this Regulation by providing a copy of it instead of the original, if the copy is in such form as the Comptroller may reasonably require.
- (8) However, if the taxpayer does provide a copy, the Comptroller may by notice in writing require the taxpayer to make the original available for inspection.

3 Provision by other persons of information about taxpayer

- (1) This Regulation applies if the Comptroller has reasonable grounds for believing –
 - (a) that a taxpayer may have failed to comply, or may fail to comply, with a domestic law of the United States concerning tax; and
 - (b) that any such failure has led, is likely to have led or is likely to lead to serious prejudice to the proper assessment or collection of tax.

- (2) If this Regulation applies, the Comptroller may require any person other than the taxpayer to provide to the Comptroller a document or record in the person's possession that contains or in the reasonable opinion of the Comptroller may contain tax information that is relevant to –
 - (a) a liability to tax to which the taxpayer is subject or may be subject;
 - (b) the amount of any such liability; or
 - (c) the taxpayer's residential status for the purposes of these Regulations.
- (3) A requirement under paragraph (2) shall be made by notice in writing.
- (4) Before giving a notice under this Regulation, the Comptroller shall allow the person of whom the requirement is to be made a reasonable opportunity to provide to the Comptroller the document or record concerned.
- (5) The Comptroller shall give to the taxpayer –
 - (a) a copy of the notice; and
 - (b) a written summary of the Comptroller's reasons for the giving of the notice.
- (6) Paragraph (5) does not require the disclosure of information –
 - (a) if its disclosure would identify or might identify a person who has provided information that the Comptroller takes into account in deciding whether to give the notice;
 - (b) if the Comptroller is satisfied that there are reasonable grounds for suspecting that the taxpayer has committed a relevant criminal offence; or
 - (c) if the Comptroller is satisfied that disclosure of information of that description would prejudice the assessment or collection of tax.
- (7) A person may comply with a notice to provide a document or record under this Regulation by providing a copy of it instead of the original, if the copy is in such form as the Comptroller may reasonably require.
- (8) However, if the person does provide a copy, the Comptroller may by notice in writing require the person to make the original available for inspection.

4 Time for compliance with notices

- (1) A notice under Regulation 2 or Regulation 3 shall specify a time within which the person to whom it is given must comply with it.
- (2) The time to be specified shall be not less than 30 days, beginning on the date on which the notice is given to the person who is to comply with it.

5 Naming of taxpayer under Regulation 3

A notice under Regulation 3 shall name the taxpayer to whom it relates.

6 Copying of information

If a document or record or tax information or evidence is provided to the Comptroller in compliance with a requirement made by the Comptroller under Regulation 2 or Regulation 3, the Comptroller may make an retain a copy or extract of it.

7 Court order for provision of information by taxpayer

- (1) This Regulation applies if the Royal Court is satisfied, on the application of the Comptroller –
 - (a) that a taxpayer has failed to comply with a requirement made of that taxpayer under Regulation

2; or

- (b) that there are reasonable grounds for suspecting that a taxpayer will not comply with such a requirement.
- (2) If this Regulation applies, the Royal Court may make an order that the taxpayer must provide to the Comptroller, within such time as the order specifies –
- (a) a document or record in the taxpayer’s possession that contains tax information that is relevant to a liability to tax to which the taxpayer is subject or may be subject, or to the amount of any such liability;
 - (b) tax information that the court specifies as being relevant to any such liability, or to the amount of any such liability; or
 - (c) evidence that the court specifies of the taxpayer’s residential status for the purposes of these Regulations.

8 Court order for delivery of document or record relating to taxpayer

- (1) This Regulation applies if the Royal Court is satisfied, on the application of the Comptroller, of both of the following matters –
- (a) that a person of whom a requirement has been made under Regulation 3 appears to have possession of a document or record to which paragraph (2) of that Regulation refers; and
 - (b) that any of the circumstances in paragraph (2) of this Regulation applies.
- (2) The circumstances to which this paragraph refers are –
- (a) that the person has failed to comply with the requirement under Regulation 3;
 - (b) that there are reasonable grounds for suspecting that the person will not comply with such a requirement; or
 - (c) that the taxpayer to whom the requirement relates or any of the class of taxpayers to whom it relates may have failed to comply, or may fail to comply, with any provision of a domestic law of the United States concerning tax, and that any such failure has led, is likely to have led or is likely to lead to serious prejudice to the proper assessment or collection of tax.
- (3) If this Regulation applies, the Royal Court may make an order that the person of whom the requirement has been made under Regulation 3 must provide the document or record to the Comptroller within such time as the order specifies.

9 Documents and records in electronic or magnetic form

If an order under Regulation 7 or Regulation 8 applies to a document or record in electronic or magnetic form, the order is to be taken to require the person to provide the information in the document or record in a form in which the information is visible and legible.

10 Notice of application for court order

A person is entitled –

- (a) to at least 14 days notice of the Comptroller’s intention to apply for an order against the person under Regulation 7 or Regulation 8; and
 - (b) to appear and be heard at the hearing of the application,
- unless the Royal Court is satisfied that compliance with this paragraph will seriously prejudice the investigation of a relevant criminal offence.

11 Protection of evidence

- (1) This Regulation applies –
 - (a) if the Comptroller has given a taxpayer a notice under Regulation 2 requiring the taxpayer to provide to the Comptroller any document, record, tax information or evidence;
 - (b) if the Comptroller has given a person a notice under Regulation 3 requiring the person to provide to the Comptroller any document or record;
 - (c) if the Comptroller has given a person notice of the Comptroller’s intention to apply for an order under either of Regulations 7 and 8.
- (2) The person shall not alter, conceal, destroy, or otherwise dispose of any document, record, information or evidence to which the notice or application relates.
- (3) This Regulation does not prohibit a person from altering, concealing, destroying or otherwise disposing of or disclosing anything –
 - (a) with the leave of the Court; or
 - (b) with the written permission of the Comptroller.
- (4) This Regulation does not prevent a person from altering, concealing, destroying or otherwise disposing of anything to which a requirement of a notice under Regulation 2 or Regulation 3 refer after the person has complied with the notice.
- (5) This Regulation does not prevent a person from altering, concealing, destroying or otherwise disposing of or disclosing anything to which an application under Regulation 7 or Regulation 8 relates –
 - (a) after the application has been dismissed or abandoned; or
 - (b) after the application has been determined and the order or orders (if any) that have been made under it have been complied with.

12 Search and seizure

- (1) On an application made by the Comptroller, the Bailiff may issue a warrant under this Regulation in respect of any premises if the Bailiff is satisfied that there are reasonable grounds for believing –
 - (a) that an offence under these Regulations has been or is about to be committed on the premises; or
 - (b) that there is or may be on the premises anything that a person may be required, by a notice given under Regulation 2 or Regulation 3, to provide to the Comptroller.
- (2) However, a warrant may not be issued under paragraph (1) in the circumstances to which subparagraph (b) of that paragraph refers unless the Bailiff is satisfied that there are reasonable grounds for believing that use of the procedure under Regulation 2 or Regulation 3 might seriously prejudice an investigation concerning tax.
- (3) A warrant that is issued under this Regulation shall remain in force for 14 days. It shall then cease to have effect.
- (4) The warrant authorizes every designated officer to enter and search the premises, and for that purpose to take with him or her such other persons as are reasonably necessary.
- (5) On entering the premises under the authority of the warrant, the person executing it may seize and remove anything found there, if he or she has reasonable grounds to believe that it may be required as evidence for the purposes of proceedings under these Regulations.
- (6) The warrant does not authorize the seizure or removal of an item that is subject to legal privilege.
- (7) In this Regulation, “designated tax officer” means –
 - (a) the Comptroller; or
 - (b) each other officer who is designated in writing for the purposes of this Regulation by the

Comptroller.

- (8) No application shall be made under this Article without the consent of the Attorney General.

13 Procedure where items are removed

- (1) A person who removes anything from any premises under Regulation 12 shall, if requested to do so by a person described in paragraph (2) of this Regulation, provide that person with a record as to what has been removed.
- (2) The persons to whom this paragraph refers are –
 - (a) an occupier of the premises; or
 - (b) a person who had possession of the thing immediately before its removal.
- (3) The record shall be provided within a reasonable time.
- (4) If the thing removed is of such a nature –
 - (a) that a photograph or copy of it is sufficient for use as evidence in proceedings under these Regulations; or
 - (b) that a photograph or copy of it is sufficient for any forensic examination or investigation under these Regulations,

the thing removed may not be retained for longer than is necessary to establish that fact and to obtain the photograph or copy.

14 Appeals

- (1) The following persons have a right of appeal to the Royal Court under these Regulations –
 - (a) a taxpayer, against a requirement made of that taxpayer under Regulation 2(1);
 - (b) a person, against a requirement made of that person under Regulation 3(2);
 - (c) a taxpayer, against a requirement made of another person under Regulation 3(2) in relation to that taxpayer.
- (2) An appeal under this Article shall be brought within 21 days after the appellant is given notice in writing of the requirement to which the appeal relates, or within such further time as the Royal Court may allow.
- (3) The effect of the requirement to which the appeal relates shall be stayed pending its determination, unless the Royal Court orders otherwise.
- (4) On hearing the appeal, the Royal Court may confirm, vary or set aside the requirement to which the appeal relates, and may make such order as to the costs of the appeal as it thinks fit.

15 Offences

- (1) A person who intentionally and without reasonable excuse contravenes or attempts to contravene Regulation 11(2) is guilty of an offence and liable to a fine.
- (2) A person who intentionally and without reasonable excuse fails to comply with a requirement under any of Regulations 2, 3, 7 or 8 is guilty of an offence and liable to a fine.
- (3) A person who intentionally and without reasonable excuse obstructs or attempts to obstruct a person who is executing a warrant under Regulation 12 is guilty of an offence and liable to imprisonment for 12 months and a fine.

16 Parties to offences

- (1) A person who aids, abets, counsels or procures the commission of an offence under these Regulations is also guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (2) If an offence under these Regulations by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership or director, manager, secretary or other similar officer of the body corporate;
 - (b) a person purporting to act in any such capacity,the person is guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) If the affairs of a body corporate are managed by its members, paragraph (2) applies in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

17 Citation and commencement

- (1) These Regulations may be cited as the Taxation (United States of America) (Jersey) Regulations 200-.
- (2) These Regulations come into force on the seventh day after they are made.

[1] L.28/2004.

[2] Chapter 24.750.