

# STATES OF JERSEY

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## **DRAFT INCOME TAX (AMENDMENT No. 24) (JERSEY) LAW 200-**

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**Lodged au Greffe in Second Reading on 14th December 2004  
by the Finance and Economics Committee**

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**STATES GREFFE**





Jersey

# DRAFT INCOME TAX (AMENDMENT No. 24)(JERSEY) LAW 200-

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Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 24)(JERSEY) LAW 200-**

**A LAW** to amend further the Income Tax (Jersey) Law 1961.

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*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 –

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### **PART 1**

#### **INTERPRETATION**

##### **1 Interpretation**

In this Law, “principal Law” means the Income Tax (Jersey) Law 1961.<sup>[1]</sup>

### **PART 2**

#### **INTRODUCTION OF INCOME TAX INSTALMENT SYSTEM**

##### **2 Article A15 inserted**

At the beginning of Part IV of the principal Law<sup>[2]</sup> there shall be inserted the following Article –

##### **“A15 Interpretation of Part IV**

(1) In this Part, unless the context otherwise requires –

‘building contractor’ means, subject to paragraphs (4) and (5) of this Article, a person carrying on any business in the building or construction industry;

‘earnings’ means all salaries, fees, wages, perquisites or profits or gains arising from an office or employment;

‘effective rate’ means the rate applicable in a person’s case in accordance with Article 41B(2) of this Law;

‘employee’ includes –

- (a) a director of a company;
- (b) a person engaged in the management of a company; and
- (c) any office holder, whether or not of a company,

and any reference to a person being employed or commencing employment shall be construed accordingly;

‘exemption certificate’ means a certificate issued under Article 41F of this Law.

- (2) For the purposes of this Part, a person is a sub-contractor of a building contractor if, under a contract for building or construction work –
  - (a) the person is under a duty to the building contractor to carry out building or construction work or to furnish his or her own labour (that is to say, in the case of a company, the labour of employees or officers of the company) or the labour of others in the carrying out of the work or to arrange for the labour of others to be furnished in the carrying out of the work; or
  - (b) the person is answerable to the building contractor for the carrying out of the work by others, whether under a contract or under other arrangements made or to be made by the person.
- (3) In determining, for the purposes of paragraph (2) of this Article, whether a person is carrying out building or construction work or furnishing labour for another person, the supply by or on behalf of the first-mentioned person to the other person of any materials which are incidental to the work shall be disregarded.
- (4) Subject to paragraph (5) of this Article, where a building contractor is not resident in the Island, any officer (by whatever name called) of the building contractor or other person who is –
  - (a) engaged in the management of the building contractor; and
  - (b) resident in the Island,shall be deemed to be the building contractor.
- (5) Where a building contractor is a body of persons, the secretary of the body or other officer (by whatever name called) performing the duties of secretary shall, if resident in the Island, be deemed to be the building contractor.
- (6) Subject to paragraph (7) of this Article, where an employer is not resident in the Island any officer (by whatever name called) of the employer or other person who is –
  - (a) engaged in the management of the employer; and
  - (b) resident in the Island,shall be deemed to be the employer.
- (7) Where an employer is a body of persons, the secretary of the body or other officer (by whatever name called) performing the duties of secretary shall, if resident in the Island, be deemed to be the employer.”.

### 3 Article 19A inserted and Schedule 5 amended

- (1) After Article 19 of the principal Law<sup>[3]</sup> there shall be inserted the following Article –

#### “19A Duty of employer or building contractor to register

- (1) A person who becomes an employer shall, no later than one month after so becoming, notify the Comptroller, in writing, of the date the person became an employer.

- (2) A building contractor shall, no later than one month after first entering into a contract with a sub-contractor, notify the Comptroller, in writing, of the date the building contractor first entered into such a contract.
  - (3) A person who fails to comply with paragraph (1) or (2) of this Article shall be guilty of an offence and liable to a fine of level 3 on the standard scale.<sup>[4]</sup>
  - (4) Where the secretary or another officer of a body corporate or any other person engaged in the management of the body corporate is deemed to be the employer by virtue of paragraph (6) or (7) of Article A15 of this Law, the body corporate, as well as that person, shall be liable to a penalty for failure to comply with paragraph (1) of this Article.
  - (5) Where the secretary or another officer of a body corporate or any other person engaged in the management of the body corporate is deemed to be the building contractor, by virtue of paragraph (4) or (5) of Article A15 of this Law, the body corporate, as well as that person, shall be liable to a penalty for failure to comply with paragraph (2) of this Article.”.
- (2) After paragraph 1 of Schedule 5 to the principal Law<sup>[5]</sup> there shall be added the following paragraph –

**“2 Income Tax (Amendment No. 24) (Jersey) Law 200 : transitional provisions for Article 19A**

- (1) Article 19A of this Law shall apply to a person who, on 31st December 2004, is an employer but who has not, at any time in 2004, delivered a return pursuant to Article 20 of this Law, as if the person became an employer on 1st January 2005.
- (2) Article 19A of this Law shall apply to a building contractor who, on 31st December 2004, has a contract with a sub-contractor but who has not, at any time in 2004, delivered a return pursuant to Article 20A of this Law, as if the building contractor first contracted with a sub-contractor on 1st January 2005.”.

**4 Articles 20 and 20A substituted**

For Articles 20 and 20A of the principal Law<sup>[6]</sup> there shall be substituted the following Articles –

**“20 Returns of information regarding employees**

- (1) An employer shall, when required to do so by a general notice or by a notice served on the employer by the Comptroller, and within the time limited by the notice, prepare and deliver to the Comptroller a true, complete and correct return containing, as required by the notice, all or any of the specified information for the period or year of assessment specified in the notice in respect of each person employed by the employer at any time during that period or year.
- (2) The specified information in respect of each person employed by the employer at any time during the period or year specified is –
  - (a) the person’s full name and place or places of residence;
  - (b) in the case of a woman, the full name of the woman’s spouse (if any);
  - (c) the reference number (if any) assigned to the person by the Comptroller;
  - (d) the reference number (if any) assigned to the employer by the Comptroller;
  - (e) the reference number assigned to the person for the purposes of the Social Security



(Jersey) Law 1974;<sup>[7]</sup>

- (f) a description of the person's employment;
  - (g) the earnings paid to the person in respect of the employment;
  - (h) the benefits provided to the person, whether by the employer or by a person connected with the employer, other than any benefit left out of account by virtue of Article 65B(2)(b) of this Law, and the amount attributable to each benefit determined in accordance with the said Article 65B;
  - (i) the amounts deducted from the earnings paid to the person in respect of superannuation;
  - (j) the amounts required, pursuant to Article 41B of this Law, to be deducted from the earnings paid to the person and the effective rate applied to each deduction;
  - (k) where the employment commenced in the period or year of assessment in question, the date of such commencement; and
  - (l) where the employment ceased in the period or year of assessment, the date of such cessation.
- (3) The Comptroller –
- (a) may require a return to be in a form, and delivered in a manner, approved by the Comptroller; and
  - (b) may require an employer to sign a declaration that the information given in the return is true, complete and correct to the best of the employer's knowledge.
- (4) Where the secretary or another officer of a body corporate or any other person engaged in the management of the body corporate is deemed to be the employer, by virtue paragraph (6) or (7) of Article A15 of this Law, the body corporate, as well as the person, shall be liable to a penalty for failure to deliver a return when required to do so by or under this Article.

## **20A Returns of information regarding building sub-contractors**

- (1) A building contractor shall, when required to do so by a general notice or by a notice served on the building contractor by the Comptroller, and within the time limited by the notice, prepare and deliver to the Comptroller a true, complete and correct return containing, as required by the notice, all or any of the specified information for the period or year of assessment specified in the notice in respect of each person who is a sub-contractor of the building contractor at any time during that period or year.
- (2) The specified information in respect of each person who is a sub-contractor of the building contractor at any time during the period or year specified is –
  - (a) the person's full name and place or places of residence;
  - (b) in the case of a woman, the full name of the woman's spouse (if any);
  - (c) the reference number (if any) assigned to the person by the Comptroller;
  - (d) the reference number (if any) assigned to the building contractor by the Comptroller;
  - (e) the reference number assigned to the person for the purposes of the Social Security (Jersey) Law 1974;<sup>[8]</sup>
  - (f) the payments made to the person, or to a person he or she has nominated for the purpose, under or in relation to the contract and the date such payments are made;
  - (g) the amounts required, pursuant to Article 41E of this Law, to be deducted from the payments described in sub-paragraph (f) in respect of tax;

- (h) the making of any payment without deduction of tax pursuant to Article 41E of this Law, by virtue of paragraph (2) of that Article;
  - (i) where the contract commenced in the period or year of assessment in question, the date of such commencement; and
  - (j) where the contract ceased in the period or year of assessment, the date of such cessation.
- (3) The Comptroller –
- (a) may require a return to be in a form, and delivered in a manner, approved by the Comptroller; and
  - (b) may require a building contractor to sign a declaration that the information given in the return is true, complete and correct to the best of his or her knowledge.
- (4) Where the secretary or another officer of a body corporate or any other person engaged in the management of the body corporate is deemed to be the building contractor, by virtue of paragraph (4) or (5) of Article A15 of this Law, the body corporate, as well as that person, shall be liable to a penalty for failure to deliver a return when required to do so by or under this Article.”.

## 5 Article A39 inserted

At the beginning of Part VII of the principal Law<sup>[9]</sup> there shall be inserted the following Article –

### “A39 Interpretation of Part VII

Expressions defined in Article A15 of this Law shall, unless the context otherwise requires have the same meaning in this Part.”.

## 6 Article 39 amended

At the beginning of Article 39 of the principal Law<sup>[10]</sup> there shall be inserted the words “Subject to Articles 41A, 41B and 41E of this Law,”.

## 7 Articles 41A to 41I inserted

After Article 41 of the principal Law<sup>[11]</sup> there shall be inserted the following Articles –

### “41A Duty to pay instalment in April

- (1) Subject to paragraph (12) of this Article, a person who is not a body corporate shall, in accordance with this Article, pay an instalment of income tax for a year of assessment.
- (2) The instalment –
  - (a) shall be due and payable no later than 6 p.m. on the last Friday in April of the year next following the year of assessment; and
  - (b) subject to this Article, shall be an amount equal to 50% of the person’s liability to income tax for the year preceding the year of assessment, less the amount of any tax already paid in respect of the year of assessment (disregarding any amount paid by way of deduction under Article 41B or 41E of this Law).
- (3) Where –

- (a) part of a person's income for the year preceding the year of assessment comprises earnings; and
  - (b) those earnings comprise 25% or less of the person's total income for that year,paragraph (2)(b) of this Article shall have effect with the substitution for the amount "50%" of the amount "40%".
- (4) A person shall not be required to pay an instalment pursuant to this Article where the instalment would be less than £100.
- (5) A person shall be liable to pay the instalment whether or not an assessment has been raised for the year of assessment for which the instalment is due.
- (6) The Comptroller may, on an application made by a person no later than the end of March preceding the day an instalment is due, reduce the amount of the instalment or waive the instalment where the Comptroller is satisfied –
  - (a) that 50% of the person's liability to income tax for the year of assessment is likely to be substantially less than the instalment determined in accordance with paragraph (2)(b) of this Article; or
  - (b) that the person's income for the year of assessment from sources other than earnings is likely to be substantially less than the person's income for the preceding year from such sources.
- (7) Where a person applies for a reduction or waiver under paragraph (6) of this Article, the Comptroller shall give notice to the person of whether or not the Comptroller has reduced the amount of or waived the instalment.
- (8) A person aggrieved by the Comptroller's refusal to reduce the amount of or waive an instalment under paragraph (6) of this Article may appeal to the Commissioners, or giving notice in writing to the Comptroller, within 40 days of the issue of the notice under paragraph (7) of this Article.
- (9) The instalment determined in accordance with paragraph (2)(b) of this Article shall be due and payable notwithstanding that an appeal is pending under paragraph (8) of this Article.
- (10) On the determination of an appeal under paragraph (8) of this Article, any balance of the instalment due in accordance with the determination shall be paid, or any amount determined to have been overpaid shall be repaid, as the case may require.
- (11) Save as provided in paragraphs (8) to (10) of this Article, Part VI of this Law shall apply, with the necessary modifications, to an appeal under paragraph (8) of this Article as it applies to an appeal against any assessment.
- (12) This Article shall not apply –
  - (a) where more than 25% of a person's total income for the year preceding the year of assessment comprises earnings; or
  - (b) in the case of a trustee liable to tax for the year of assessment by virtue of Article 6(2) of the Income Tax (Superannuation Funds) (Jersey) Order 1972.<sup>[12]</sup>

#### **41B Duty of employer to deduct and account for tax**

- (1) An employer shall, in accordance with this Article, deduct tax at the effective rate from earnings payable by the employer to an employee.
- (2) The effective rate shall be –
  - (a) where the employer has received a copy of a notice issued by the Comptroller under Article 41C of this Law specifying a rate applicable on the day the

deduction is made, the rate so specified;

(b) where the employer has not received a copy of such a notice –

(i) for deductions made in the years 2006 and 2007, 15%,

(ii) for deductions made in the year 2008 and ensuing years, 20%.

- (3) When making a deduction under paragraph (1) of this Article, an employer shall give the employee written notice of the amount of the deduction and the effective rate applied to the deduction.
- (4) An employer shall maintain a record of the amount of tax deducted and the effective rate applied to the deduction in respect of each of his or her employees.
- (5) An employer shall, no later than 15 days after the end of each month, remit to the Comptroller an amount equal to the aggregate of the amounts required to be deducted under paragraph (1) of this Article during the month in respect of each of his or her employees.
- (6) An employer shall, no later than the end of January following a year of assessment, give each of the persons in his or her employment at the end of that year a written summary of the deductions made pursuant to this Article from the employee's earnings for that year.
- (7) Where an employee ceases employment before the end of a year of assessment, the employer shall, upon the employment ceasing, give the employee a written summary of the deductions made pursuant to this Article from the employee's earnings for that year.
- (8) An employer shall not be required to deduct tax and remit it to the Comptroller in the case of an employee who, on the 31st December in the year in which the deduction would otherwise be made, will be under the age of 17 years.
- (9) An employer who fails to comply with paragraph (5) of this Article shall be guilty of an offence and liable to a fine of –
  - (a) level 4 on the standard scale,<sup>[13]</sup> and
  - (b) an amount not exceeding the monies not remitted, in contravention of that paragraph.
- (10) Where the secretary or another officer of a body corporate or any other person engaged in the management of the body corporate is deemed to be the employer by virtue of paragraph (6) or (7) of Article A15 of this Law, the body corporate, as well as the person, shall be liable to a fine under paragraph (9) of this Article.
- (11) The imposition of a fine under paragraph (9)(b) of this Article shall not discharge the employer's liability to remit the monies required under paragraph (5) of this Article.
- (12) Where an employee proves, to the satisfaction of the Comptroller, that a deduction has been made from the employee's earnings, in accordance with paragraph (1) of this Article, the employee shall be entitled to have the deduction treated as a payment of tax by the employee, notwithstanding that the employer has failed to remit the amount to the Comptroller in accordance with paragraph (5) of this Article.
- (13) An employer who fails to make a deduction in accordance with paragraph (1) of this Article but who remits to the Comptroller the amount required by paragraph (5) of this Article in respect of an employee may recover that amount from the employee as a civil debt.
- (14) Deductions shall be made, in accordance with this Article, from the earnings of a married woman notwithstanding that, by virtue of Article 121(1) of this Law, her income is deemed to be that of her husband.
- (15) An agreement shall be void to the extent that it provides for the payment of earnings

without deduction of tax in contravention of this Article.

#### **41C Calculation of rate**

(1) In this Article –

‘payment year’ means the year in which the rate applies to deductions made under Article 41B of this Law;

‘the year of assessment’ means the year preceding the payment year.

(2) Subject to this Article and Article 41D of this Law, the rate applicable in an employee’s case shall be determined in accordance with the following formula –

$$\frac{L}{I} \times 100 = \text{percentage effective rate}$$

Where –

L is the sum of –

- (a) the employee’s liability to tax for the year of assessment;
- (b) an amount not exceeding the aggregate of any arrears of tax for any earlier year of assessment (whether or not judgment has been obtained in respect of the arrears); and
- (c) any costs recoverable in respect of such arrears, less any amount of tax already paid for the year of assessment (disregarding any amount paid by way of deduction under Article 41B or 41E of this Law); and

I is the total of the sums for which the employee has been or is liable to be assessed for the year of assessment and the sums in respect of which the employee is liable to allow the deduction of tax in the year of assessment.

- (3) The percentage rate determined in accordance with paragraph (2) of this Article shall be rounded up to the nearest whole number.
- (4) The Comptroller may, before an employee has delivered a statement for the year of assessment pursuant to Article 16 of this Law, determine, in accordance with paragraph (5) of this Article, a provisional rate and issue a notice, in writing, to the employee of the rate and the day from which the rate applies.
- (5) For the purposes of determining a rate pursuant to paragraph (4) of this Article paragraph (2) of this Article shall have effect with –
  - (a) in sub-paragraph (a) of the definition ‘L’, the insertion after the words “liability to tax for” of the words “the year preceding”;
  - (b) in the definition ‘I’ –
    - (i) the insertion after the words “assessed for” of the words “the year preceding”,
    - (ii) the insertion after the words “deduction of tax in” of the words “the year preceding”.
- (6) The Comptroller may, after an employee has delivered a statement for the year of assessment pursuant to Article 16 of this Law, determine the rate applicable to the employee and issue a notice, in writing, to the employee and the employee’s employer, of the rate and the day from which the rate applies.
- (7) Where it appears to the Comptroller at any time that, by reason of any change in the information by reference to which the rate is determined, the rate applicable in an employee’s case has altered, the Comptroller may issue a notice, in writing, to the employee and the employee’s employer, of the revised rate and the day from which the

rate applies.

- (8) Subject to paragraph (9) of this Article –
  - (a) an employee may, at any time, make an election, in writing, to the Comptroller to have a rate applied in the employee's case that exceeds the rate determined in accordance with the foregoing paragraphs of this Article; and
  - (b) upon an election being made, the Comptroller shall issue a notice in writing to the employee of the rate and the day from which the rate applies.
- (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%.
- (10) A notice issued by the Comptroller under this Article shall have effect until whichever is the earlier of –
  - (a) the day stated in the notice;
  - (b) the day on which a rate specified in a further notice has effect; or
  - (c) the end of the current year.
- (11) An employee aggrieved by the rate applicable in his or her case, or by a refusal by the Comptroller to issue a notice under this Article, may appeal to the Commissioners, on giving notice in writing to the Comptroller –
  - (a) within 40 days of the issue of a notice under of this Article; or
  - (b) where the Comptroller has not issued a notice to the employee, within 40 days of providing the Comptroller with sufficient information to determine a rate under this Article.
- (12) The rate notified to the employee or, in the case where no rate has been notified to the employee, the rate applicable by virtue of Article 41B(2)(b), shall apply in the employee's case notwithstanding that an appeal is pending under paragraph (11) of this Article.
- (13) Save as provided in paragraphs (11) and (12) of this Article, Part VI of this Law shall apply, with the necessary modifications, to an appeal under paragraph (11) of this Article as it applies to an appeal against any assessment.
- (14) The fact that, in determining the rate applicable in an employee's case, the sum 'L' referred to in paragraph (2) of this Article includes an amount described in sub-paragraph (b) or (c) of that paragraph shall not prevent the Comptroller pursuing the recovery of that amount by other means.
- (15) A person who gives another person –
  - (a) a document purporting to be a notice issued by the Comptroller under this Article, knowing it to be false; or
  - (b) a notice issued by the Comptroller under this Article, knowing that the notice has been altered by a person other than the Comptroller,shall be liable to a fine of level 4 on the standard scale. <sup>[14]</sup>

#### **41D Deductions in respect of husbands and wives**

- (1) In the case of a husband and wife to whom Article 121(1) of this Law applies–

- (a) a rate shall be determined in accordance with Article 41C(2) of this Law as if the husband were the employee, whether or not he is in employment; and
  - (b) subject to paragraph (2) of this Article, where the Comptroller has issued a notice under Article 41C specifying a rate, that rate shall apply to both the husband and the wife.
- (2) Where the husband and wife are each in employment they may jointly elect for the rate applicable to the earnings of one of them to be increased and the rate applicable to the earnings of the other of them to be correspondingly reduced.
- (3) The increased rate applicable to the earnings of one of them may exceed the limit in Article 41C(9), if the husband and wife so elect and the Comptroller so agrees.
- (4) The aggregate of the deductions made when applying the rates, adjusted pursuant to this Article, to the earnings of the husband and wife shall not be less than the aggregate of the deductions that would have been made had the adjustment not been made.
- (5) An election shall cease to have effect upon –
  - (a) either the husband or wife ceasing to be in employment;
  - (b) paragraph (4) not being complied with;
  - (c) a new rate applying pursuant to a further notice issued under Article 41C of this Law; or
  - (d) an effective rate described in Article 41B(2)(b) of this Law applying.

#### **41E Duty of building contractor to deduct and account for tax**

- (1) A building contractor shall, in accordance with this Article, deduct tax at the specified rate from payments made to a sub-contractor or to a person nominated by the sub-contractor for the purpose.
- (2) Paragraph (1) of this Article shall not apply at any time when –
  - (a) the sub-contractor has produced an exemption certificate to the building contractor; and
  - (b) the building contractor is satisfied that the exemption certificate is in force at the time the payment is made.
- (3) When making a deduction under paragraph (1) of this Article a building contractor shall give the sub-contractor or the person nominated by the sub-contractor to receive the payment written notice of the amount of the deduction.
- (4) A building contractor shall maintain a record of the amount of tax deducted in respect of each of his or her sub-contractors.
- (5) A building contractor shall, no later than 15 days after the end of each month, remit to the Comptroller an amount equal to the aggregate of the amounts required to be deducted under paragraph (1) of this Article during the month in respect of each of his or her sub-contractors.
- (6) Where, before the end of a year of assessment, a person ceases to be a sub-contractor of a building contractor, the building contractor shall give the sub-contractor a written summary of the total deductions made, pursuant to this Article, during that year, from the payments made under the contract to the sub-contractor or person nominated by the sub-contractor for the purpose.
- (7) A building contractor shall, no later than the end of January following a year of assessment, give each person who is, at the end of the year, his or her sub-contractor, a written summary of the total deductions made, pursuant to this Article, during that year, from the payments made under the contract to the sub-contractor or person nominated

by the sub-contractor for the purpose.

- (8) A building contractor who fails to comply with paragraph (5) of this Article shall be guilty of an offence and liable to a fine of –
  - (a) level 4 on the standard scale,<sup>[15]</sup> and
  - (b) an amount not exceeding the monies not remitted, in contravention of that paragraph.
- (9) Where the secretary or another officer of a body corporate or any other person engaged in the management of the body corporate is deemed to be the building contractor by virtue of paragraph (4) or (5) of Article A15 of this Law, the body corporate, as well as that person, shall be liable to a fine under paragraph (8) of this Article.
- (10) The imposition of a fine under paragraph (8)(b) of this Article shall not discharge the building contractor's liability to remit the monies required by paragraph (5) of this Article.
- (11) Where a sub-contractor proves, to the satisfaction of the Comptroller, that a deduction has been made in accordance with paragraph (1) of this Article from payments made to the sub-contractor or to a person nominated by the sub-contractor for the purpose, the sub-contractor shall be entitled to have the deduction treated as a payment of tax by the sub-contractor, notwithstanding that the building contractor has failed to remit the amount to the Comptroller in accordance with paragraph (5) of this Article.
- (12) A building contractor who fails to make a deduction in accordance with paragraph (1) of this Article but who remits to the Comptroller the amount required by paragraph (5) of this Article may recover that amount from the sub-contractor as a civil debt.
- (13) A contract shall be void to the extent that it provides for payments to be made without deduction of tax, in contravention of this Article.
- (14) Where a sub-contractor has arrears of tax for any year of assessment, the fact that deductions are made in accordance with this Article from payments made to the sub-contractor or to a person nominated by the sub-contractor for the purpose shall not prevent the Comptroller pursuing the recovery of those arrears by any means.
- (15) For the purposes of this Article, the 'specified rate' is –
  - (a) for deductions made in the years 2006 and 2007, 15%;
  - (b) for deductions made in the year 2008, and ensuing years, 20%.

#### **41F Exemption certificate**

- (1) A sub-contractor may apply to the Comptroller for an exemption certificate.
- (2) An application for an exemption certificate shall be made in such form and manner, and accompanied by such information, as the Comptroller may require.
- (3) The Comptroller may issue an exemption certificate where the Comptroller is satisfied that the sub-contractor has consistently complied with the requirements of this Law in full and without delay.
- (4) An exemption certificate shall, unless cancelled under paragraph (5) of this Article, have effect for the year specified in it, and may be issued subject to conditions.
- (5) The Comptroller may cancel an exemption certificate at any time when –
  - (a) the Comptroller is no longer satisfied that the sub-contractor has consistently complied with the requirements of this Law in full and without delay; or
  - (b) the conditions attached to the certificate have not been complied with.



- (6) Upon cancelling an exemption certificate, the Comptroller shall publish a notice of cancellation in such a manner that the notice is likely to be seen by persons affected by it.
- (7) The cancellation of an exemption certificate shall take effect upon publication of the notice required by paragraph (6) of this Article.
- (8) A person who gives another person –
  - (a) a document purporting to be an exemption certificate issued by the Comptroller under this Article, knowing it to be false; or
  - (b) an exemption certificate, knowing that the certificate has been altered by a person other than the Comptroller,shall be liable to a fine of level 4 on the standard scale. <sup>[16]</sup>

#### **41G Treatment of amounts received by Comptroller**

- (1) Subject to paragraphs (2) to (4) of this Article, the Comptroller shall receive an amount remitted under Article 41B or 41E of this Law as a payment of tax for the preceding year of assessment by the employee from whose earnings, or the sub-contractor from whose payments, the amount was deducted.
- (2) Where the Comptroller receives an amount remitted under Article 41B or 41E of this Law which has been deducted from the earnings of, or payments made to, a married woman whose income, by virtue of Article 121(1) of this Law, is deemed to be that of her husband, the Comptroller shall receive the amount as a payment of tax by her husband.
- (3) Where, in determining the rate applicable to an amount remitted under Article 41B of this Law, the amount 'L' defined in Article 41C(2) of this Law includes an amount, in accordance with sub-paragraph (b) or (c) of that definition, in respect of arrears of tax or costs recoverable with them, the Comptroller shall apportion any amount remitted under that Article between the employee's liability to pay tax for the year of assessment and his or her liability to pay the arrears or costs, in the same proportion that those liabilities bear to each other.
- (4) Where, in the case of a sub-contractor who has arrears of tax, or costs recoverable with arrears, accruing from a previous year of assessment, the deductions received by the Comptroller in a year of assessment exceed the sub-contractor's liability to tax for the preceding year, the Comptroller shall –
  - (a) receive the excess as a payment of those arrears or costs; and
  - (b) where the sub-contractor has outstanding arrears or costs from more than one previous year of assessment, apply the excess so as to reduce or discharge the arrears or costs from the earliest year of assessment first.
- (5) This Article shall apply notwithstanding that an assessment has not been served on the employee or sub-contractor under Article 25.

#### **41H Arrangements for new taxpayers**

- (1) This Article applies to a person –
  - (a) who was resident in the Island in any of the years of assessment 2002, 2003 and 2004 but who has not, before 1st September 2005, delivered to the Comptroller a statement, pursuant to Article 16 of this Law, for any of those years;
  - (b) who is resident in the Island on 31st December 2005 but who has not, before that

date, provided the Comptroller with information that would be sufficient to enable the Comptroller, in accordance with Article 41C of this Law, to determine a rate to apply in the person's case for the year 2006; or

(c) who first commences employment or becomes a sub-contractor, in the Island, on or after 1st January 2006 and who was not liable to tax, as a person residing in the Island, for the year of assessment preceding the year in which the employment or contract commences.

(2) A person to whom this Article applies who, on 1st January 2006, is in employment or a sub-contractor of a building contractor shall be treated as a new taxpayer for the period of 7 years beginning on that date.

(3) A person to whom this Article applies who, after 1st January 2006, commences employment or becomes a sub-contractor of a building contractor shall be treated as a new taxpayer for the period consisting of the year in which the employment or contract commences and the 6 ensuing years.

(4) Where a person treated as a new taxpayer, whether by virtue of paragraph (2) or (3) of this Article or by virtue of this paragraph –

(a) ceases to reside in the Island before the end of the period applicable in the person's case pursuant to, as the case may be, paragraph (2) or (3) of this Article or this paragraph; and

(b) returns to the Island to commence or resume employment in the Island, or to become or resume as a sub-contractor in the Island,

the person shall be treated as a new taxpayer for the period consisting of the year in which the employment or contract commences or resumes and the 6 ensuing years.

(5) A person described in paragraph (2) of this Article shall, no later than 1st March 2006 notify the Comptroller, in writing, of the information described in paragraphs (7) and (8) of this Article.

(6) A person described in paragraph (3) or (4) of this Article shall, no later than one month after commencing or resuming the employment or entering into or resuming the contract, notify the Comptroller, in writing, of the information described in paragraphs (7) and (8) of this Article.

(7) The information required is –

(a) the person's full name and place or places of residence;

(b) the reference number assigned to the person for the purposes of the Social Security (Jersey) Law 1974;<sup>[17]</sup>

(c) the person's date of birth;

(d) if the person is married, the date of the marriage;

(e) the number of children dependent upon the person;

(f) the date (if any) the person arrived in the Island;

(g) the name and address of –

(i) if the person is an employee, his or her employer,

(ii) if the person is a sub-contractor of a building contractor, the building contractor;

(h) the date the employment or building contract commenced;

(i) an estimate of the person's –

(i) earnings from the employment or payments under the building contract, and

(ii) income from all other sources,

in the year in which the employment or contract commences.

- (8) A married person shall also provide the information described in paragraph (7) of this Article in respect of his or her spouse.
- (9) The Comptroller may –
  - (a) require a return of information under paragraph (7) of this Article to be in a form, and delivered in a manner, approved by the Comptroller; and
  - (b) require the person making the return to sign a declaration that the information given is true, complete and correct to the best of his or her knowledge.
- (10) Whilst a person is treated as a new taxpayer, this Part shall apply with the following modifications –
  - (a) in Article 41C(2) –
    - (i) in the definition ‘L’, for sub-paragraph (a) there shall be substituted the following sub-paragraph –  
‘(a) the employee’s estimated liability to tax for the payment year;’,
    - (ii) in the full out words to the definition ‘L’, for the words “the year of assessment” there shall be substituted the words “the payment year”,
    - (iii) for the definition ‘I’ there shall be substituted the following definition –  
‘ I’ is the total of the sums for which the employee is estimated to be liable to be assessed for the payment year and the sums in respect of which the employee is estimated to be liable to allow the deduction of tax in the payment year.’;
  - (b) in paragraphs (1) and (4) of Article 41G for the words ‘preceding year’ there shall be substituted the words ‘that year’.
- (11) For the last 2 years of assessment for which a person is treated as a new taxpayer, this Part shall apply with the additional modification that in Article 41C(2) for the amount ‘100’ there shall be substituted the amount ‘50’.

#### **41I Late payment surcharge**

- (1) In this Article, ‘specified time’, in relation to a year of assessment, means 6 p.m. on the Friday following the first Monday in December of the year next following the year of assessment.
- (2) Any person chargeable to tax, whether or not an assessment has been served on that person, shall be liable to pay an amount in addition to that tax (hereafter referred to as the ‘surcharge’) equal to 10% of that tax which remains unpaid, if the tax chargeable on that person for the year of assessment is not paid in full by the specified time.  
Provided that the Comptroller may waive payment of the surcharge –
  - (a) if it amounts to £50 or less for any year of assessment;
  - (b) where failure to pay the tax by the specified day is caused by the action of a person, in accordance with Article 3A of this Law, not connected with the person liable to the surcharge and the failure is remedied without unnecessary delay; or
  - (c) the Comptroller is satisfied that death, serious illness or other grave and exceptional circumstance prevented payment by the specified time.
- (3) Paragraph (2) of this Article shall not apply where the aggregate of the amounts received by the specified time by the Comptroller, pursuant to Article 41G of this Law, as payment of a person’s tax for the year of assessment, is 70% or more of the person’s liability to tax for that year.

- (4) The Comptroller shall issue a written notice to a person of his or her liability under paragraph (2) of this Article.
- (5) A person may, within 40 days of the issue of a notice under paragraph (4) of this Article apply to the Comptroller in writing for a waiver under paragraph (2) of this Article.
- (6) Where a person applies under paragraph (5) of this Article, the Comptroller shall give notice to the person of whether or not he has waived the person's liability.
- (7) A person aggrieved by the Comptroller's refusal to waive liability under paragraph (2) of this Article may appeal to the Commissioners, on giving notice in writing to the Comptroller within 40 days of the issue of notice of refusal.
- (8) The following provisions of this Law shall apply, with the necessary modifications, to an appeal under paragraph (7) of this Article as they apply to an appeal against any assessment –
  - (a) the proviso to Article 27(1);
  - (b) Article 27(2);
  - (c) Article 28(1);
  - (d) Article 29, with the omission of paragraphs (4) and (5);
  - (e) Articles 29A and 31 to 36.
- (9) All monies received by the Comptroller in payment of the surcharge shall be applied to meet the costs of collection of the Income Tax Department and any remainder paid to the Treasurer of the States.”.

## **8 Consequential amendment and repeals**

- (1) In Article 17A(12) of the principal Law<sup>[18]</sup> for the words “Article 26(2)” there shall be substituted the words “Article 41I(2)”.
- (2) The following provisions of the principal Law shall be repealed –
  - (a) Article 26;<sup>[19]</sup>
  - (b) Article 102;<sup>[20]</sup>
  - (c) Article 136(4).<sup>[21]</sup>

## **9 Bankruptcy (Désastre) (Jersey) Law 1990 amended**

In Article 32(1)(c)(i) of the Bankruptcy (Désastre) (Jersey) Law 1990,<sup>[22]</sup> for the words “Article 45” there shall be substituted the words “Articles 41B, 41E and 45”.

## **10 Commencement of Part 2**

- (1) The following provisions of this Part shall come into force on 1st January 2005 –
  - (a) Articles 2 and 3;
  - (b) Article 5;
  - (c) Article 7, to the extent that it inserts the following Articles in the principal Law –
    - (i) Article 41C,
    - (ii) Article 41D,
    - (iii) Article 41F.

- (2) The following provisions of this Part shall come into force on 1st January 2006 –
- (a) Article 4;
  - (b) Article 6;
  - (c) Article 7, to the extent that it is not already in force by virtue of paragraph (1)(c);
  - (d) Articles 8 and 9.

## **PART 3**

### **EXTENSION OF TRADES CHARGEABLE UNDER SCHEDULE D**

#### **11 Article 3 amended**

In Article 3(1) of the principal Law<sup>[23]</sup> –

- (a) after the definition “enactments” there shall be inserted the following definition –
  - “ ‘fixed place of business’ includes a building site or a construction project;”;
- (b) in the definition “trade” after the word “includes” there shall be inserted the words “every disposal, on a commercial basis, of property deriving its value from land or from any building or structure or from any part thereof, and”.

#### **12 Article 61 amended**

In Article 61 of the principal Law<sup>[24]</sup> –

- (a) in paragraph (1)(a)(iii) for the words “from” (in the first place where it appears) to the end of the clause there shall be substituted the following words –
  - “from –
  - (A) any property whatever in the Island;
  - (B) any trade exercised in the Island, whether or not through a fixed place of business in the Island;
  - (C) any profession, employment, vocation or office exercised within the Island; or
  - (D) any pension arising in the Island;”;
- (b) after paragraph (1) there shall be inserted the following paragraph –
  - “(1A) In the case of a trade of disposing of property deriving its value from land or from any building or structure or from any part thereof, which is situated in the Island, the land, building or structure shall be a fixed place of business through which the trade is exercised, whether or not the disposal is made or concluded in the Island.”.

#### **13 Commencement of Part 3**

This Part shall have effect for the year of assessment 2004 and ensuing years.

## **PART 4**

### **PERSONS GRANTED HOUSING CONSENT UNDER REGULATION 1(1)(K)**

## 14 Part XXIA inserted

After Part XXI of the principal Law<sup>[25]</sup> there shall be inserted the following Part –

### “PART XXIA

#### SPECIAL PROVISION FOR PERSON GRANTED 1(1)(K) HOUSING CONSENT

##### 135A Persons granted 1(1)(k) housing consent

- (1) This Article applies to any person who, pursuant to a 1(1)(k) housing consent granted on or after 1st January 2005, acquires land or property conferring a right to occupy land (whether or not that person has previously been granted such a consent).
- (2) This Article shall cease to apply to the person upon –
  - (a) the revocation of the 1(1)(k) housing consent; or
  - (b) the person ceasing to own the land or property conferring the right to occupy land, unless, within the period of 6 months following such cessation, the person acquires other land or such property pursuant to a further 1(1)(k) housing consent.
- (3) Notwithstanding the rate of tax required by Article 1 of this Law to be charged for a year of assessment, where, for that year of assessment, so much of the person’s total income as is not Jersey income exceeds the prescribed limit, the amount of the excess shall be chargeable to tax at the prescribed rate.
- (4) The States may by Regulations, for the purposes of paragraph (3) of this Article, specify a prescribed limit and either a single prescribed rate or different prescribed rates to apply to different portions of so much of a person’s income as is chargeable to tax in accordance with that paragraph.
- (5) In this Article –

‘1(1)(k) housing consent’ means consent under the Housing (Jersey) Law 1949<sup>[26]</sup> for the sale, transfer or lease of any land in the case described in Regulation 1(1)(k) of the Housing (General Provisions) (Jersey) Regulations 1970;<sup>[27]</sup>

‘Jersey income’ means –

- (a) all annual profits or gains arising or accruing from –
  - (i) any rents or receipts described in Article 51 of this Law,
  - (ii) any kind of property whatever, situated in the Island,
  - (iii) any trade exercised in the Island, whether or not through a fixed place of business in the Island,
  - (iv) any profession, employment, vocation or office exercised within the Island, or
  - (v) any pension arising in the Island;
- (b) all interest of money and annuities arising in the Island; and
- (c) all sums paid to an individual or an individual’s personal representative pursuant to Article 131D or 131E of this Law,

and includes any payment to be charged to tax by virtue of Article 86(2)(e) of this Law.

### **135B Exchange of information for the purposes of Article 135A**

- (1) Notwithstanding anything in this Law or any other enactment –
  - (a) the Comptroller may disclose information to the Housing Committee or an officer of that Committee for the purposes of the grant and revocation of 1(1)(k) housing consents;
  - (b) an officer of the Housing Committee may disclose information to the Comptroller for the purposes of the administration of this Article.
- (2) A person to whom information is disclosed pursuant to paragraph (1) of this Article shall use it only for the purposes for which it is disclosed.
- (3) In this Article –
  - ‘1(1)(k) housing consent’ has the same meaning as in Article 135A of this Law;
  - ‘officer’ has the same meaning as in Article 36A(6) of the States of Jersey Law 1966 [28],.

### **15 Commencement of Part 4**

This Part of this Law shall come into force on 1st January 2005.

## **PART 5**

### **APPORTIONMENT OF ALLOWANCES ETC. FOR INDIVIDUAL ABSENT FROM THE ISLAND**

### **16 Article 129A inserted**

After Article 129 of the principal Law<sup>[29]</sup> there shall be inserted the following Article –

#### **“129A Apportionment for individual in Island for part of year**

- (1) Subject to paragraph (2), this Article applies, for any year of assessment, to an individual who is not –
  - (a) in the Island for the whole of that year; or
  - (b) assessed and charged to income tax for that year in accordance with Article 126 of this Law.
- (2) This Article shall not apply to an individual whose allowances and reliefs for the year of assessment have been reduced in accordance with Article 106 of this Law, and –
  - (a) who is not an employee or office holder or a sub-contractor carrying on the duties of the employment, office or contract in the Island; or
  - (b) who is a director of a company which is incorporated in the Island or which, in the year of assessment, is resident in, or carries on any part of its activities in, the Island.
- (3) Where this Article applies to an individual for a year of assessment, the exemption threshold applicable in the individual’s case by virtue of Article 92A of this Law, and any reliefs, reduction, allowances and deductions to which the individual would otherwise have been entitled under Parts XI and XII and Article 65B(3) of this Law shall be reduced to an amount equal to, for each period of 7 complete, consecutive days

in that year for which the individual proves, to the satisfaction of the Comptroller, that he or she is in the Island, 1/52nd of the amounts determined in accordance with the aforementioned provisions.

(4) In this Article –

‘office holder’ does not include a director of a company described in paragraph (2)(b) of this Article;

‘sub-contractor’ has the same meaning as in Article A15 of this Law’.

## 17 Commencement of Part 5

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

## PART 6

### REMOVAL OF ALLOWANCE FOR CHILD IN CERTAIN CASES

## 18 Article 95 amended

In Article 95 of the principal Law<sup>[30]</sup> –

- (a) in paragraph (1)(b) for the words “full-time instruction at any university, college or other establishment for further education” there shall be substituted the words “full-time higher education”;
- (b) in paragraph (2) for the words “such full-time instruction as aforesaid” there shall be substituted the words “such full-time instruction or full-time higher education as aforesaid”;
- (c) after paragraph (5) there shall be added the following paragraph–

“(6) In this Article ‘higher education’ has the same meaning as in the Education (Jersey) Law 1999.<sup>[31]</sup>”.

## 19 Schedule 5 amended

After paragraph 1 of Schedule 5 to the principal Law<sup>[32]</sup> there shall be added the following paragraph –

### “2 Income Tax (Amendment No. 24) (Jersey) Law 200: transitional provision for Article 95

- (1) In this paragraph ‘amending Law’ means the Income Tax (Amendment No. 24) (Jersey) Law 200-<sup>[33]</sup>.
- (2) In the case of an individual entitled, for the year of assessment 2004, to a deduction under Article 95(1)(b) or (2) of this Law in respect of a child receiving instruction at any university, college or other establishment for further instruction, but who is not receiving full-time higher education, Article 95 of this Law shall, for so long as the child continues to receive such instruction at that university, college, or other establishment for further instruction, continue to have effect without the amendment made by Article 18 of the amending Law.
- (3) In sub-paragraph (2) of this paragraph ‘higher education’ has the same meaning as in the Education (Jersey) Law 1999.<sup>[34]</sup>”.



**20 Commencement of Part 6**

This Part shall have effect for the year of assessment 2005 and ensuing years.

**PART 7**  
CLOSING PROVISION

**21 Citation**

This Law may be cited as the Income Tax (Amendment No. 24) (Jersey) Law 200.

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- [1] *Volume 1961-1962, pages 197 and 443, Volume 1963-1965, pages 97, 143, 178, 189, 423 and 454, Volume 1966-1967, page 523, Volume 1968-1969, pages 38 and 219, Volume 1970-1972, pages 209, 305 and 382, Volume 1973-1974, page 275, Volume 1975-1978, pages 47, 148 and 257, Volume 1979-1981, pages 16, 157, 297 and 383, Volume 1982-1983, page 46, Volume 1984-1985, page 76, Volume 1986-1987, pages 192 and 208, Volume 1988-1989, pages 222 and 380, Volume 1990-1991, pages 96, 432 and 1088, Volume 1992-1993, pages 36 and 121, Volume 1994-1995, pages 220 and 366, Volume 1996-1997, pages 264, 643 and 652, Volume 1998, pages 3 and 259, Volume 1999, pages 209, 390, 403 and 418, Volume 2000, page 290, Volume 2001, pages 123 and 145, Volume 2003, page 239 and Volume 2004, page 795.*
- [2] *Volume 1961-1962, page 203, Volume 1963-1965, page 178, Volume 1986-1987, page 192, Volume 1996-1997, page 267, Volume 2003, page 251 and Volume 2004, page 808.*
- [3] *Volume 1961-1962, page 205.*
- [4] *Volume 1992-1993, page 437.*
- [5] *Volume 1961-1962, page 308 and Volume 2004, page 821.*
- [6] *Volume 1961-1962, pages 205 and 206, Volume 1963-1965, page 178, Volume 1996-1997, page 268 and Volume 2003, page 251.*
- [7] *Volume 1973-1974, page 319, Volume 1982-1983, pages 51, 53 and 239, Volume 1986-1987, pages 149 and 151, Volume 1990-1991, pages 467 and 1117, Volume 1992-1993, pages 433 and 437, Volume 1994-1995, page 423, Volume 1996-1997, pages 7 and 1063, Volume 1998, page 722, Volume 1999, pages 419 and 515, Volume 2000, page 873, Volume 2002, pages 639 and 643, Volume 2004, page 839 and Nos. 7640, 7666, 8602 and 9112.*
- [8] *Volume 1973-1974, page 319, Volume 1982-1983, pages 51, 53 and 239, Volume 1986-1987, pages 149 and 151, Volume 1990-1991, pages 467 and 1117, Volume 1992-1993, pages 433 and 437, Volume 1994-1995, page 423, Volume 1996-1997, pages 7 and 1063, Volume 1998, page 722, Volume 1999, pages 419 and 515, Volume 2000, page 873, Volume 2002, pages 639 and 643, Volume 2004, page 839 and Nos. 7640, 7666, 8602 and 9112.*
- [9] *Volume 1961-1962, page 217.*
- [10] *Volume 1961-1962, page 217.*
- [11] *Volume 1961-1962, page 217.*
- [12] *R&Os 5752 and 6073.*
- [13] *Volume 1992-1993, page 437.*
- [14] *Volume 1992-1993, page 437.*
- [15] *Volume 1992-1993, page 437.*
- [16] *Volume 1992-1993, page 437.*
- [17] *Volume 1973-1974, page 319, Volume 1982-1983, pages 51, 53 and 239, Volume 1986-1987, pages 149 and 151, Volume 1990-1991, pages 467 and 1117, Volume 1992-1993, pages 433 and 437, Volume 1994-1995, page 423, Volume 1996-1997, pages 7 and 1063, Volume 1998, page 722, Volume 1999, pages 419 and 515, Volume 2000, page 873, Volume 2002, pages 639 and 643, Volume 2004, page 839 and Nos. 7640, 7666, 8602 and 9112.*
- [18] *Volume 1961-1962, page 204 and Volume 2004, page 808.*
- [19] *Volume 1961-1962, page 209, Volume 1992-1993, page 121, Volume 1999, page 404 and Volume 2004, page 807.*
- [20] *Volume 1961-1962, page 262, Volume 1986-1987, page 201 and Volume 1999, page 409.*
- [21] *Volume 1961-1962, page 296.*
- [22] *Volume 1990-1991, page 78.*
- [23] *Volume 1961-1962, page 198, Volume 1963-1965, page 143, Volume 1975-1978, page 47, Volume 1996-1997, page 266, Volume 1999, page 403 and Volume 2003, pages 241, 242 and 251.*
- [24] *Volume 1961-1962, page 226, Volume 2002, page 427, Volume 2003, page 242 and Volume 2004, pages 799 and 800.*
- [25] *Volume 1961-1962, page 295, Volume 1963-1965, page 424, Volume 1975-1978, page 258, Volume 1979-1981, page 384, Volume 1996-1997, page 269, Volume 1999, pages 213 to 215 and 418 and Volume 2004, page 807.*

- [26] *Tome VII, page 535, Volume 1988-1989, page 295, Volume 1990-1991, pages 545 and 1113, Volume 1992-1993, page 115, Volume 1996-1997, pages 1 and 337, Volume 1999, pages 418 and 533, Volume 2002, page 1215 and Volume 2004, page 773.*
- [27] *R&Os 5444, 5981, 6284, 6651, 6720, 6903, 7167, 7572, 8170, 8592, 8866, 8919, 9446, 16/2001, 54/2001, 14/2002, 135/2002, 14/2003, 52/2003 and 148/2003.*
- [28] *Volume 1966-1967, page 18, Volume 1996-1997, pages 11 and 803 and R&O 9176.*
- [29] *Volume 1961-1962, page 282.*
- [30] *Volume 1961-1962, page 255 and Volume 2000, pages 292 and 293.*
- [31] *Volume 1999, page 439, Volume 2001, page 300 and R&O 130/2004.*
- [32] *Volume 1961-1962, page 308 and Volume 2004, page 821.*
- [33] *P.222/2004.*
- [34] *Volume 1999, page 439, Volume 2001, page 300 and R&O 130/2004.*