

# STATES OF JERSEY



## DRAFT INCOME TAX (AMENDMENT No. 32) (JERSEY) LAW 200

---

Lodged au Greffe on 21st October 2008  
by the Minister for Treasury and Resources

---

STATES GREFFE





Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 32)(JERSEY) LAW 200**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources the provisions of the Draft Income Tax (Amendment No. 32) (Jersey) Law 200 are compatible with the Convention Rights.

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

## **REPORT**

---

This draft Law gives effect to proposals described in the Draft Budget Statement 2009.

### **Financial and manpower implications**

The financial and manpower implications are clearly identified at Section 9 of the Draft Budget Statement 2009 (P.158/2008).

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 17th October 2008 the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Treasury and Resources the provisions of the Draft Income Tax (Amendment No. 32) (Jersey) Law 2008 are compatible with the Convention Rights.

## Explanatory Note

---

This draft Law would amend the Income Tax (Jersey) Law 1961 “principal Law”.

*Article 1* is an interpretation provision.

*Article 2* amends Article 51 of the principal Law to make it clear that the provisions in Article 51 setting out when tax is chargeable under Schedule A are without prejudice to other provisions in the Law setting out when tax is chargeable under that Schedule.

*Article 3* repeals the provision in the principal Law that exempts from Jersey tax the income of a UK pension fund derived from investment or deposits.

*Article 4* amends Article 123C of the principal Law so that a non-Jersey company is charged under Schedule A in respect of its deemed rental income. A non-Jersey company means a company resident in Jersey chargeable to tax under Schedule D at 0% whose ultimate beneficial owner is not regarded as resident, or if an individual, not ordinarily resident, in Jersey and controls at least 51% of the voting power of the company or any holding company of the company. If the Comptroller considers that the main purpose of any transaction or arrangement entered into by a company on or after 21st October 2008 (the date this proposition is lodged) is to avoid liability as a non-Jersey company, the company is deemed to be a non-Jersey company and liable to tax under Schedule A accordingly.

*Article 5* inserts **Articles 123G, 123H, 123I and 123J** into the principal Law.

**Article 123G** sets out the meaning of deemed rental income. Deemed rental income is the rental income that a non-Jersey company would receive in respect of premises owned in Jersey for the purposes of its business were such premises leased on the open market in Jersey. “Ownership” includes leases and similar interests. Deemed rental income is to be calculated by an independent valuer and certified to the Comptroller.

**Article 123H** provides that a non-Jersey company shall be taxed under Schedule A in respect of its deemed rental income for a year of assessment as if such income were annual profits or gains to which the company was entitled in that year of assessment. If a company pays less than the full market value for a rent, lease or similar interest in the premises it owns, its deemed rental income is the difference between the amount it pays and the rental income at full market value. If it pays nothing at all then tax is charged on its full deemed rental income. Provision is made for deduction in certain circumstances. These include where a company is partly owned by Jersey and non-Jersey residents; where premises are partly owned by a company other than a 0% rated company; and in respect of sums expended on or for the premises that are for the purpose of the non-Jersey company’s business. No tax is charged on a company in a year of assessment if that company makes no profit that is chargeable to tax under Schedule D in that year.

**Article 123I** gives an aggrieved person a right to appeal to the Commissioners against a decision of the Comptroller relating to any decision he or she makes under Article 123C or Article 123H concerning transactions or arrangements to avoid tax as a non-Jersey company.

**Article 123J** gives the Minister power to amend the provisions relating to non-Jersey companies.

*Article 6* provides that this Law shall have effect for the year of assessment 2009 and ensuing years.

*Article 7* sets out the title of this Law.





Jersey

## DRAFT INCOME TAX (AMENDMENT No. 32)(JERSEY) LAW 200

### Arrangement

---

#### Article

- 1 [Interpretation](#)
- 2 [Article 51 amended](#)
- 3 [Article 115 amended](#)
- 4 [Article 123C amended](#)
- 5 [Articles 123G to 123J inserted](#)
- 6 [Years of assessment for which this Law has effect](#)
- 7 [Citation](#)







Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 32)(JERSEY) LAW 200**

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

---

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

---

### **1 Interpretation**

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

### **2 Article 51 amended**

After Article 51(1) there shall be inserted the following paragraph–

“(1A) Paragraph (1) is without prejudice to any other provision of this Law directing tax to be charged under Schedule A and the tax so directed to be charged shall be charged accordingly.”.

### **3 Article 115 amended**

Article 115(g) of the principal Law shall be repealed.

### **4 Article 123C amended**

For Article 123C(2) of the principal Law there shall be substituted the following paragraphs–

“(2) A company to which this Article applies shall be charged to tax for a year of assessment under Schedule D at the rate of 0%.

(2A) A non-Jersey company shall be charged to tax for a year of assessment under Schedule A in respect of its deemed rental income in accordance with Article 123H.

(2B) ‘Non-Jersey company’ means a company to which this Article applies and which has an ultimate beneficial owner of shares in that company where –

(a) such beneficial owner, alone or with a connected person, is entitled to exercise, or control the exercise of, 51% or more of the voting power at any general meeting of the company; and

(b) such beneficial owner is not regarded as being resident in Jersey within the

meaning of Article 123 or, if an individual, is not ordinarily resident in Jersey.

- (2C) If, on or after 21st October 2008, a company to which this Article applies enters into any transaction or arrangement the main purpose of which, in the opinion of the Comptroller, is to avoid liability to tax as a non-Jersey company under this Article, that transaction or arrangement shall be disregarded and the company shall be deemed to be a non-Jersey company and assessed to tax under Schedule A under this Article accordingly.”.

## 5 Articles 123G to 123J inserted

After Article 123F of the principal Law there shall be inserted the following Articles–

### “123G Meaning of deemed rental income

- (1) For the purposes of this Part, ‘deemed rental income’ means the rental income to which a non-Jersey company would be entitled in respect of any premises owned by that company in Jersey for the purposes of its business if such premises were leased on the open market in Jersey.
- (2) The amount of deemed rental income shall be calculated by an independent valuer and certified to the Comptroller by the independent valuer.
- (3) For the purposes of this Part ‘independent valuer’ means a person who is independent of the company and is any of the following –
  - (a) a fellow or professional associate of the Royal Institution of Chartered Surveyors;
  - (b) a fellow or associate of the Incorporated Society of Valuers and Auctioneers; or
  - (c) a fellow or associate of the Institute of Revenues, Rating and Valuation.
- (4) For the purposes of paragraph (3) a person is independent of the company if that person –
  - (a) is not an officer, servant or controller of the company; or
  - (b) does not have a financial interest in the company being an interest that is reasonably regarded as significant.
- (5) In paragraph (4) ‘controller’ means a person who, either alone or with any connected person, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the company or of another body corporate of which the company is a subsidiary.
- (6) Deemed rental income shall be calculated under paragraph (2) in respect of any premises in Jersey owned by a non-Jersey company for the purposes of its business notwithstanding any reason, including any legal reason, which would prevent such premises from being leased on the open market.
- (7) For the purposes of this Article and Article 123H–
  - (a) “premises” mean any building or part of a building and any curtilage of such building or part.
  - (b) premises owned by a company includes –
    - (i) premises let to the company under a lease or tenancy agreement, or
    - (ii) premises which the company is entitled to occupy by virtue of its ownership of shares in another company.

### 123H Non-Jersey companies

- (1) Subject to paragraph (2) tax shall be charged under Schedule A on a non-Jersey company in respect of its deemed rental income in a year of assessment as if such income were annual profits or gains falling within Article 51(1)(a) to which the company was entitled in that year of assessment.
- (2) If a company is owner of premises by virtue of a lease, tenancy or other similar interest, no tax shall be charged under paragraph (1) on deemed rental income relating to such premises unless the company did not pay full market value for its interest in such premises during all or part of the year of assessment.
- (3) For the purposes of paragraph (2) the full market value shall be assessed by an independent valuer and certified to the Comptroller by the independent valuer.
- (4) Tax chargeable on a company by virtue of paragraph (2) shall be charged on the difference between the deemed rental income for the premises and the amount paid by the company during the year of assessment for its interest in the premises.
- (5) If tax is chargeable on a company by virtue of paragraph (2) and the company paid no amount during the year of assessment for its interest in such premises, tax shall be charged in respect of the company's full deemed rental income for that year for those premises.
- (6) If a non-Jersey company has shareholders (including beneficial shareholders) who are Jersey residents, an amount that, in the opinion of the Comptroller, fairly reflects the proportion of shares that those residents hold in the company during the year of assessment shall be deducted from the deemed rental income for that year of assessment.
- (7) If tax for a year of assessment is chargeable on a non-Jersey company in respect of premises of which a company, other than a company to which this Article applies, is also an owner for all or part of that year, the non-Jersey company's deemed rental income shall be such amount as an independent valuer considers is reasonable and that amount shall be certified to the Comptroller by the valuer.
- (8) If a non-Jersey company has no annual profits or gains for a year of assessment that are chargeable to tax under Schedule D (notwithstanding that the rate is 0% under that Schedule) the company shall not be charged to tax in respect of its deemed rental income for that year.
- (9) A non-Jersey company shall not be charged to tax in respect of the amount of its deemed rental income for a year of assessment that exceeds the amount of annual profits or gains that are chargeable to tax under Schedule D for that year (notwithstanding that the rate under that Schedule is 0%).
- (10) Subject to paragraph (11), in assessing the tax chargeable in respect of the deemed rental income from a non-Jersey company's premises for a year of assessment there may be deducted from that income any sums, not being sums of a capital nature, necessarily expended during that year of assessment on or for those premises for the purposes of the non-Jersey company's business, including any interest payments made for purchasing immovable property.
- (11) No deduction may be made of any sums paid by a non-Jersey company in respect of any transaction entered into by the non-Jersey company after 21st October 2008 if, in the Comptroller's opinion, the main purpose of that transaction is the reduction of that company's tax liability as a non-Jersey company in respect of its deemed rental income.
- (12) No deduction may be made from a non-Jersey company's deemed rental income for a year of assessment by way of relief under Article 123EA in respect of a loss suffered by another qualifying company, within the meaning of that Article, in the same group as the non-Jersey company.

**123I Appeal to Commissioners in respect of non-Jersey companies**

A person aggrieved by a decision of the Comptroller under Article 123C(2C) or Article 123I (11) shall be entitled to appeal to the Commissioners and the provisions of Part 6 shall apply in the case of an appeal under this paragraph as they apply in the case of an appeal against assessment, with such adaptations as may be necessary.

**123J Power of Minister to amend provisions relating to non-Jersey companies by Order**

The Minister may, by Order, amend any provision in Article 123C(2) to (2C), Article 123 and Article 123H as he or she thinks fit’.

**6 Years of assessment for which this Law has effect**

This Law shall have effect for the year of assessment 2009 and ensuing years.

**7 Citation**

This Law may be cited as the Income Tax (Amendment No. 32) (Jersey) Law 2009.

