STATES OF JERSEY

DRAFT INCOME TAX (AMENDMENT No. 41) (JERSEY) LAW 201-

Lodged au Greffe on 4th April 2012
by the Minister for Treasury and Resources

STATES GREFFE

Jersey

DRAFT INCOME TAX (AMENDMENT No. 41) (JERSEY) LAW 201-

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. 41) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

This draft Law is being proposed to introduce an international pension scheme in Jersey. This will be known as the ‘Recognized Pension Scheme’ (“RPS”).

Background

Jersey’s finance industry has identified the area of international pensions as a potential growth market. As such, the RPS is proposed as a mechanism through which to capitalise on this market and diversify the private wealth offering of the finance industry.

Proposed legislation

The RPS is a Jersey-based pension scheme which allows individuals, irrespective of where they live, to save for their retirement in a safe and secure environment – for example, the RPS will be able to accept pension transfers from the UK where the relevant individual is leaving the UK to live abroad and wishes to transfer their existing pension scheme out of the UK. Such pension transfers are made possible under the UK’s Qualifying Recognised Overseas Pension Scheme (“QROPS”) rules. The RPS has been designed to be compliant with the QROPS rules, but it is not designed to be limited to this market. Once Jersey has established a track record in the area of international pensions, the intention is to open up other markets and forms of retirement saving.

In order to be an RPS, a pension scheme must be “recognized” by the Comptroller of Taxes; and to do this the scheme must meet a number of specific statutory conditions, together with such other conditions as the Comptroller thinks fit to apply. As a consequence, an RPS will have the following characteristics:

– there will be no Jersey tax relief for contributions made to an RPS;

– no Jersey tax will be payable on benefits paid out of an RPS;

– the funds in a RPS will grow free from Jersey tax;

– no benefits can be paid out of an RPS until a member reaches the age of 55 (except in the case of the member’s death or the member suffering from serious ill health);

– at least 70% of the funds in an RPS must be designated to provide the member with an income for life; and

– there is the ability to pay benefits to a limited category of other people on the death of the member.

The RPS is a pension scheme that is designed to help individuals to save for their retirement and, as such, there are significant Jersey tax implications if the applicable conditions are not adhered to, or if individuals attempt to take benefits which are not permitted under the Law.

Financial and manpower implications

It is estimated that accepting transfers from UK schemes into the RPS could generate annual tax revenues of approximately £1.2 million and an additional 120 jobs.

Additional revenue is expected to arise from other markets and forms of retirement savings, which will be enabled by the creation of the RPS.

For the majority of Jersey residents it remains advantageous to save through the existing domestic pension schemes. However, a small proportion of the population may choose to save for their retirement in an RPS.

Economic advice has been sought on the potential cost of introducing the RPS, which suggests that the cost, based on prudent assumptions, could be around £4.5 million per annum. This analysis is based on attempting to predict taxpayer behaviour, and cannot be determined with any certainty. Nor can the additional benefits (such as the uptake in non-UK markets) be quantified at the current time. It is considered, on balance, that the potential for immediate job creation and diversification of the financial service sector warrants the creation of the RPS.

The RPS will be closely monitored and appropriate steps taken to ensure that it results in a net benefit to the Island.

The manpower resource required to administer the RPS will be dealt with by the Pensions Manager within the Taxes Office and hence no additional manpower is required.

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 3rd April 2012 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. 41) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This Law amends the Income Tax (Jersey) Law 1961 to set out the conditions that are to apply to recognized pension schemes and to provide for their recognition by the Comptroller of Taxes.

Article 1 enables the Income Tax (Jersey) Law 1961 to be referred to in this Law as the principal Law.

Article 2 inserts definitions into the Income Tax Law – of “Jersey Financial Services Commission” and “recognized pension scheme”.

Article 3 in effect disapplies Article 87 of the Income Tax Law to a recognized pension scheme to avoid a construction of the Article as requiring tax to be deducted from amounts paid out of a recognized pension scheme.

However *Article 4* amends Article 92A of the Income Tax Law to reduce an individual’s tax-free threshold by the amount of any pension paid out of a recognized pension scheme. *Article 4* also corrects a spelling mistake.

Article 5 amends Article 115 of the Income Tax Law to ensure that income of a recognized pension scheme is not taxed.

Article 6 inserts a Division heading “*Division 1 – Treatment of certain allowances*” at the start of Part 19 of the Income Tax Law and *Article 7* inserts later in the same Part a Division heading “*Division 2 – Superannuation, annuities and pensions*”.

Article 8 amends Article 131B of the Income Tax Law to require that payments to a recognized pension scheme are counted in the limit (equivalent to £50,000 or a member’s related earnings) imposed on the aggregate of contributions that the member makes under an annuity contract to which Article 131B applies, an annuity trust scheme to which Article 131CA applies and certain other pension schemes.

Article 9 amends Article 131CA of the Income Tax Law to ensure that payments to a recognized pension scheme are counted in the limit (equivalent to £50,000 or a member’s related earnings) imposed on the aggregate of contributions that the member makes under an annuity contract to which Article 131B applies, an annuity trust scheme to which Article 131CA applies and certain other pension schemes.

Article 10 amends Article 132 of the Income Tax Law, which sets out the tax treatment of certain purchased life annuities on the basis that they contain a capital element. Article 132 sets out how that element is to be calculated and apportioned but contains a list of annuities to which the Article does *not* apply. The amendment adds to that list any annuity derived at least in part from investments or deposits of a recognized pension scheme.

Article 11 inserts an entire new *Division 3 – Recognized pension schemes* at the end of Part 19 of the Income Tax Law. The Division contains new **Articles 132A** to **132L**, which provide for the recognition by the Comptroller of Taxes of certain pension schemes and contain a number of requirements and other provisions applying to those pension schemes.

Article 132A sets out definitions for the interpretation of Division 3, and **Article 132B** specifies, in particular, the meaning of serious ill health.

Article 132C specifies the terms as to membership and benefits that a pension scheme must be based on if it is to be recognized under Division 3 (but an exception appears in **Article 132F(1)(b)** under which a scheme may be recognized if it meets a set of conditions prescribed by Order).

Article 132D makes requirements as to the terms of the trust that constitutes such a pension scheme (subject again to the exception in **Article 132F(1)(b)**).

Article 132E prohibits a number of pension schemes approved under Division 2 of Part 19 from becoming recognized pension schemes under Division 3.

Article 132F makes provision for the Comptroller to recognize pension schemes that meet the requirements of **Articles 132C** and **132D**, or requirements prescribed by Order under **Article 132F(1)(b)**. The Comptroller is required to give notice of recognition and of the conditions to which it is subject. The Comptroller is also required to give notice of any refusal of recognition.

Article 132G enables an appeal to be made and heard against the conditions of recognition or against the refusal of recognition.

Article 132H enables the Comptroller to withdraw recognition from a pension scheme if it fails to comply with the requirements of Division 3, if funds pass to the pension scheme from a pension scheme referred to in **Article 132E** or, more generally, if its administration or arrangements are not satisfactory. **Article 132H** also enables an appeal to be made and heard against such withdrawal.

Article 132I sets out the tax liabilities that arise on the withdrawal of recognition.

Article 132J provides that contributions to a recognized pension scheme do not get relief from tax.

Article 132K provides that benefits paid out of a recognized pension scheme are exempt from tax. (The income of a recognized pension scheme is not taxed: see note above on *Article 5* amending Article 115 of the Income Tax Law.)

Article 132L requires that tax be paid on certain payments out of a recognized pension scheme where these are not authorized by the rules of the scheme.

Article 12 sets out the short title of the Law and *Article 13* provides for the Law to come into force as appointed by the States.

Jersey

DRAFT INCOME TAX (AMENDMENT No. 41) (JERSEY) LAW 201-

Arrangement

Article

Jersey

DRAFT INCOME TAX (AMENDMENT No. 41) (JERSEY) LAW 201-

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[1].

2 Article 3 amended

In Article 3(1) of the principal Law the following definitions shall be inserted, each in appropriate alphabetical order –

" 'Jersey Financial Services Commission' means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998[2];";

" 'recognized pension scheme' means a pension scheme that is the subject of recognition in force under Division 3 of Part 19;".

3 Article 87 amended

After Article 87(5) of the principal Law the following paragraph shall be added –

"(6) The reference in paragraph (4)(a) to an individual, and the reference in paragraph (4)(c) to trustees, do not include any trustee of a recognized pension scheme.".

4 Article 92A amended

In Article 92A of the principal Law –

(a) in paragraph (2) after the matter “(5),” the matter “(7),” shall be inserted;

(b) in paragraph (6) after the word “paragraphs” the matter “(7),” shall be inserted;

(c) after paragraph (6) the following paragraphs shall be inserted –

“(7) Where a pension is paid in any year of assessment to an individual out of a recognized pension scheme, the threshold applicable in the case of the individual for that year of assessment shall be reduced by the amount of that pension.

(7A) For the avoidance of doubt, a threshold cannot be reduced under paragraph (7) to less than zero.”;

(d) in paragraph (9) for the words “increased be an amount” the words “increased by an amount” shall be substituted.

5 Article 115 amended

After Article 115(fb) of the principal Law the following paragraph shall be inserted –

“(g) any income derived from investments or deposits of a recognized pension scheme;”.

6 Division 1 heading added to Part 19

Immediately before Article 130 of the principal Law the following heading shall be inserted –

“Division 1 – Treatment of certain allowances”.

7 Division 2 heading added to Part 19

Immediately before Article 131 of the principal Law the following heading shall be inserted –

“Division 2 – Superannuation, annuities and pensions”.

8 Article 131B amended

After Article 131B(3)(b)(vi)(B) of the principal Law the following sub-clause shall be inserted –

“(B1) any contribution to a recognized pension scheme,”.

9 Article 131CA amended

After Article 131CA(3)(g)(vi)(B) of the principal Law the following sub-clause shall be inserted –

"(B1) any contribution to a recognized pension scheme,".

10 Article 132 amended

After Article 132(7)(ba) of the principal Law the following sub-paragraph shall be inserted –

"(bb) to any annuity where the whole or part of the consideration for the grant of the annuity consisted of sums derived from investments or deposits of a recognized pension scheme;".

11 Division 3 added to Part 19

The following Division shall be added to Part 19 of the principal Law after Article 132 –

"Division 3 – Recognized pension schemes

132A Interpretation

In this Division –

'member' means, in respect of a pension scheme, an individual by or on whose behalf funds or contributions are paid into the scheme for his or her benefit;

'membership condition' means the condition set out in Article 132C;

'recognition' means, in respect of a pension scheme, recognition of the scheme under this Division;

'relief' in relation to tax includes exemption from tax;

'serious ill health' is defined by virtue of Article 132B;

'trust condition' means the condition set out in Article 132D;

'trustee' means, in respect of a pension scheme, the sole corporate trustee, or the trustees, of the scheme.

132B Serious ill health

For the purposes of this Division, an individual is not in serious ill health unless the trustee of the recognized pension scheme of which the individual is a member has received evidence from a medical practitioner that the individual is expected to live for less than one year.

132C Membership condition

(1) For the purposes of this Division, the membership condition is satisfied in respect of a pension scheme if –

(a) the scheme has for its sole purpose the provision of benefits to or in respect of its members;

(b) under the scheme, benefits are payable to or in respect of a member in at least one of the following circumstances –

(i) on the retirement of the member,

(ii) on the death of the member,

(iii) when the member reaches a particular age,

(iv) on the onset of serious ill health, or incapacity, of the member, or

(v) in similar circumstances relating to the member;

(c) under the scheme, benefits are not payable to or in respect of a member in any circumstances other than those specified in sub-paragraph (b);

(d) under the scheme, a pension or lump sum cannot be paid, in respect of a member, to one or more persons other than the member;

(e) participation in the scheme is open to persons resident in Jersey, whether or not it is also open to persons who are not resident in Jersey;

(f) a pension or lump sum cannot be paid under the scheme to a member before the member attains the age of 55 years;

(g) the rules of the scheme provide that –

(i) at least 70% of each member's scheme funds are designated, during the life of the member, for the purpose of providing the member with an income for life, and

(ii) each member's scheme funds so designated include at least 70% of the member's tax-relieved funds; and

(h) such other requirements as the Minister may prescribe by Order are met in respect of the scheme.

(2) Nothing in paragraph (1)(d) prevents the membership condition from being satisfied in respect of a pension scheme if the rules of the scheme provide that a pension or lump sum may be paid, in respect of a member, to one or more persons other than the member if the member has died and those persons are one or more of the following –

(a) the spouse or civil partner of the member;

(b) a child or grandchild of the member;

(c) a dependant of the member not included in sub-paragraph (a) or (b), where 'dependant' means a person who was, immediately before the member died, dependent upon the member for the ordinary necessities of life.

(3) Nothing in paragraph (1)(f) prevents the membership condition from being satisfied in respect of a pension scheme if the scheme provides, or has the effect, that –

(a) a pension or lump sum may be paid on the onset of serious ill health of a member, whether or not the member has attained the age of 55 years, provided only that the member has ceased to carry on his or her occupation; or

(b) a pension or lump sum may be paid as referred to in paragraph (2) in respect of a member who has died before attaining the age of 55 years.

(4) In paragraph (1)(g) –

'member's scheme funds' means, in respect of a member of a pension scheme (referred to as *scheme A* in this paragraph), being a pension scheme referred to in paragraph (1), the funds that are from time to time attributable under scheme A to the member;

'member's tax-relieved funds' means, in respect of a member of scheme A, the following funds –

(a) funds that were attributable, under another pension scheme (referred to as *scheme B* in this paragraph), to the member, and transferred from scheme B to scheme A (whether directly or via one or more intermediate pension schemes) where those funds were the subject of tax relief in the place where scheme B was established;

(b) funds that were attributable, under scheme B, to the member, and transferred from scheme B to scheme A (whether directly or via one or more intermediate pension schemes), where the funds arose from contributions that were the subject of tax relief in the place where the member was resident when they were paid; or

(c) funds that arose from contributions to scheme A in respect of the member that were the subject of tax relief in the place where the member was resident when the contributions were paid.

132D Trust condition

For the purposes of this Division, the trust condition is satisfied in respect of a pension scheme if –

(a) the scheme is established under irrevocable trusts under Jersey law and administered in Jersey;

(b) there is or are in respect of those trusts a sole corporate trustee or, alternatively, 2 or more trustees (who may be individuals, but are not required to be individuals);

(c) in the case where –

(i) there is in respect of those trusts a sole corporate trustee, the trustee is resident in Jersey or has a permanent establishment there,

(ii) there are in respect of those trusts 2 trustees, each of the trustees is resident in Jersey or has a permanent establishment there,

(iii) there are in respect of those trusts more than 2 trustees, more than half the trustees are resident in Jersey or have permanent establishments there;

(d) those trusts only have effect, or are only capable of having effect, so as to provide benefits to or in respect of members in accordance with the membership condition;

(e) the trustee is registered under the Financial Services (Jersey) Law 1998[3] to carry on trust company business and that registration permits the trustee to provide the services mentioned in Article 2(4)(h) of that Law; and

(f) such other requirements as the Minister may prescribe by Order are met in respect of the scheme.

132E Certain approved pension schemes cannot become or arise from recognized pension scheme

(1) A pension scheme that is or was at any time any of the following cannot be recognized by the Comptroller for the purposes of this Division –

(a) a superannuation fund, or pension scheme, approved under Article 131;

(b) an annuity contract approved under Article 131B;

(c) a retirement annuity trust scheme approved under Article 131CA;

(d) a drawdown contract approved under Article 131D;

(e) a trust approved under Article 131E.

(2) A pension scheme that is, or was at any time, a recognized pension scheme cannot be approved by the Comptroller under Division 2.

132F Comptroller may grant recognition

(1) The Comptroller may, on application in writing setting out the rules of a pension scheme and such other information as the Comptroller requires, and accompanied by such documents as the Comptroller requires, grant recognition of the pension scheme if he or she is satisfied that the scheme –

(a) satisfies both the membership condition and the trust condition; or

(b) satisfies any condition that the Minister may prescribe by Order for the purposes of this Article.

(2) Such recognition may be unconditional or subject to such condition or conditions as the Comptroller thinks fit.

(3) The Comptroller shall give notice in writing of recognition, and any conditions to which it is subject, to the person or persons specified in the application as the trustee of the pension scheme.

(4) If the Comptroller refuses an application under this Division, he or she shall give notice in writing of the refusal and the reasons for it to the person or persons specified in the application as the trustee of the pension scheme.

132G Appeal

(1) A person who is aggrieved by a decision of the Comptroller to make recognition subject to any conditions, or to refuse recognition, shall be entitled to appeal to the Commissioners by giving the Comptroller notice in writing, stating the grounds of appeal, within 21 days after the date on which the notice of the recognition or refusal is given under Article 132F(3) or (4).

(2) On such an appeal, the Commissioners may review, and confirm, set aside or vary the decision of the Comptroller that has been appealed against.

(3) The following provisions of this Law shall apply, with the necessary modifications, to an appeal under paragraph (1) as they apply to an appeal against any assessment –

(a) the proviso to Article 27(1);

(b) Article 27(2);

(c) the proviso to Article 28(1);

(d) Article 29, with the omission of paragraphs (4) and (5);

(e) Articles 29A, 35 and 36.

132H Procedure for withdrawal of recognition

(1) The Comptroller may at any time withdraw recognition of a recognized pension scheme if it appears to the Comptroller that –

(a) the membership condition or trust condition, or, as the case requires, any condition prescribed under Article 132F(1)(b), is not satisfied in respect of the scheme;

(b) the facts concerning the scheme, or its trustee, its administration or the arrangements made in relation to it, do not warrant the continuance of recognition; or

(c) the trustee of the scheme has accepted the transfer to the scheme of any sum, rights or obligations from a fund, scheme, contract, or trust, that is or was at any time a fund, scheme, contract, or trust, referred to in any of sub-paragraphs (a) to (e) of paragraph (1) of Article 132E.

(2) For the purposes of paragraph (1)(c), it makes no difference –

(a) whether the transfer was direct or indirect;

(b) whether the transfer related to one or more members of the recognized pension scheme or to its members generally; or

(c) whether the transfer was of capital, interest, accrued rights or contingent rights or otherwise.

(3) The Comptroller shall give to the trustee of the scheme written notice of the withdrawal of recognition, the grounds for the withdrawal and the date on which the withdrawal takes effect.

(4) The notice shall be given no later than 28 days after the withdrawal takes effect, and may be given before the withdrawal takes effect.

(5) The date on which withdrawal of recognition takes effect shall not be earlier than the date on which the Comptroller became aware of the existence of the grounds for withdrawal.

(6) A person who is aggrieved by a decision of the Comptroller to withdraw recognition shall be entitled to appeal to the Commissioners by giving the Comptroller notice in writing, stating the grounds of appeal, within 40 days after the date on which notice is given, under paragraph (3), of the withdrawal.

(7) On such an appeal, the Commissioners may review, and confirm, set aside or vary the decision of the Comptroller that has been appealed against.

(8) The following provisions of this Law shall apply, with the necessary modifications, to an appeal under paragraph (6) as they apply to an appeal against any assessment –

(a) the proviso to Article 27(1);

(b) Article 27(2);

(c) the proviso to Article 28(1);

(d) Article 29, with the omission of paragraphs (4) and (5);

(e) Articles 29A, 35 and 36.

132I Consequences of withdrawal of recognition

(1) When withdrawal under Article 132H of recognition of a pension scheme takes effect, the trustee shall be liable to tax under Schedule D Case VI, notwithstanding Article 1, at the rate of 50% on an amount equal to whichever, on the day on which the withdrawal takes effect, is the greater of –

(a) the market value of the assets held for the purposes of the scheme; or

(b) the aggregate of –

(i) contributions to the scheme, including transfers from other pension schemes and transfers from any fund, scheme, contract, or trust, and

(ii) income accrued from investments or deposits of the scheme.

(2) The Comptroller may abate the liability to tax under paragraph (1) by an amount that is, having regard to the relevant circumstances, just and reasonable.

(3) Such circumstances include, but are not limited to, circumstances where the trustee has already paid tax in another country, on the amount referred to in paragraph (1), in respect of the scheme.

132J Contributions not eligible for tax relief

A contribution to a recognized pension scheme shall not be eligible for relief from income tax.

132K Benefits exempt from tax

A pension or lump sum paid to a person out of a recognized pension scheme in accordance with its rules shall not be charged to income tax.

132L Consequences of unauthorized payment

(1) A person (whether resident in Jersey or elsewhere) shall be liable to tax under Schedule D Case VI in respect of any payment (whether of a pension or of a lump sum or otherwise) out of a recognized pension scheme and in favour of the person, being a payment that is not authorized by the rules of the scheme.

(2) The trustee of the scheme shall collect the tax referred to in paragraph (1) –

(a) by withholding an amount equivalent to the tax when making the payment referred to in paragraph (1);

(b) by recovering an amount equivalent to the tax from the person after making that payment; or

(c) by deducting an amount equivalent to the tax from the funds of the scheme that are attributable to the relevant member.

(3) The trustee of the scheme shall pay the amount so collected to the Comptroller within 28 days after making the payment referred to in paragraph (1).

(4) The trustee shall, not later than 28 days after paying the amount so collected to the Comptroller, give to the person to whom the payment referred to in paragraph (1) was made notice setting out the amount and date of the payment under paragraph (3).

(5) For the purposes of paragraph (1), the reference in Article 61(1)(a) to any annual profits or gains or to any pension includes a reference to any amount (whether of a pension or of a lump sum or otherwise) paid as referred to in paragraph (1).

(6) The withdrawal of the recognition of a scheme shall not affect any liability or requirement in respect of the scheme, being a liability or requirement that arose under this Article before the withdrawal took effect.

(7) The trustee of the scheme shall be guilty of an offence and liable to a fine if the trustee fails to comply with this Article.”.

12 Citation

This Law may be cited as the Income Tax (Amendment No. 41) (Jersey) Law 201-.

13 Commencement

This Law shall come into force on such day or days as the States may by Act appoint.

[1] *chapter 24.750*
[2] *chapter 13.250*
[3] *chapter 13.225*