

# STATES OF JERSEY



## **DRAFT INCOME TAX (AMENDMENT No. 41) (JERSEY) LAW 201- (P.104/2012): AMENDMENT**

---

**Lodged au Greffe on 20th November 2012  
by the Minister for Treasury and Resources**

---

**STATES GREFFE**

**1 PAGE 20, ARTICLE 3 –**

In the inserted Article 3AE –

(a) in paragraph (1)(c) for the words “distribution out” substitute the word “transfer”;

(b) for paragraph (2) substitute the following paragraph –

“(2) For the purposes of paragraph (1) –

(a) sub-paragraph (b) and (c) do not include any interest of money which is chargeable to tax under Case I of Schedule D or Case III(a) of Schedule D (whether such interest is charged or not);

(b) sub-paragraph (c) does not include a transfer of assets where the following conditions are satisfied –

(i) the advance, where made on or after 1st January 2013, is on a commercial basis and remains on a commercial basis until fully repaid or, if made before that date is on a commercial basis on that date and remains on a commercial basis until fully repaid, and

(ii) the advance is made to a trading company or a company within a trading group and is repayable by a trading company or a company within a trading group throughout the period from the date the advance is made until the advance is fully repaid.”;

(c) for paragraph (6) substitute the following paragraph –

“(6) In this Article –

‘new consideration’ means consideration not provided (directly or indirectly) out of the assets of a company and, for this purpose –

(a) any amount retained by the company by way of capitalizing a distribution; or

(b) the transfer of shares to a company pursuant to the purchase or redemption by the company of its own shares,

is not regarded as new consideration;

‘share’ includes stock and any other interest of a member in a company (whether or not the company is limited by shares).”.

**2 PAGE 22, ARTICLE 8 –**

(1) In the inserted Article 78(1A) –

(a) after the words “a company shall not be charged” insert the words “under Case III of Schedule D”;

(b) for sub-paragraph (b) substitute the following sub-paragraph –

“(b) so much of a distribution as represents a return of share capital where the company received new consideration in respect of the issue of that share capital;”;

(c) in sub-paragraph (c), for the full-stop substitute a semi-colon;

(d) after sub-paragraph (c) add the following sub-paragraph –

“(d) so much of a distribution as an individual can prove to the satisfaction of the Comptroller has been made out of the same profits as those that have been used to determine that an earlier distribution is a relevant distribution for the purposes of Case IX of Schedule D.”.

(2) For the inserted Article 78(1B) substitute the following paragraph –

“(1B) For the purposes of paragraph (1A)(b) –

(a) the reference to share capital includes stated capital of a no par value company and share premium;

(b) ‘new consideration’ has the meaning set out in Article 3AE(6).”.

### **3 PAGE 24, ARTICLE 9 –**

In the inserted Article 81Q for paragraph (3) substitute the following paragraph –

“(3) For the purposes of Articles 81Q to 81Z –

(a) any reference to a distribution being made to an individual is a reference to a distribution being made directly to the individual or to a distribution where the individual is otherwise entitled to it; and

(b) any reference to the amount of a distribution shall, where the distribution is other than for a cash amount, refer to the market value of the distribution at the time it is made.”.

### **4 PAGE 24, ARTICLE 9 –**

For the inserted Article 81R substitute the following Article –

#### **“81R Meaning of ‘relevant distribution’**

(1) Except where an individual has made an election under paragraph (4), if the amount of a distribution made to an individual in a current year of assessment at a relevant time is equal to or less than the individual’s allocated share of specified profits at that relevant time, that distribution is a relevant distribution.

(2) If the amount of a distribution made to an individual in a current year of assessment at a relevant time is greater than the individual’s allocated share of specified profits at that relevant time, such a distribution is a relevant distribution only to the extent that the

value of the distribution is equal to the individual's allocated share of specified profits at the relevant time.

- (3) If more than one distribution is made to an individual at a relevant time, "the amount of a distribution" in paragraphs (1) and (2) shall be read as referring to the aggregate value of those distributions.
- (4) An individual may, by notice in writing to the Comptroller, elect that, in respect of year of assessment 2013, paragraphs (1) and (2) shall not apply.
- (5) An election under paragraph (4) must be made on or before 31st December 2015.
- (6) Where an election has been made by an individual under paragraph (4), any distribution made to the individual at a relevant time during year of assessment 2013 is a relevant distribution."

## 5 PAGE 30, ARTICLE 9 –

For the inserted Article 81V(3) substitute the following paragraph –

"(3) If, at the immediately previous relevant time –

- (a) Article 81T(3), 81U(4), 81W(4) or paragraph (4) below applied, Q is the same value as Q calculated under Article 81T(2)(b), 81U(2)(b), 81W(2)(b) or Step 4 above, at the immediately previous relevant time, as the case may be;
- (b) Article 81T(4), 81U(5), 81W(5) or paragraph (5) below applied, Q is calculated as follows –

G + H

Where –

G is the amount of the distribution (or, if more than one, the aggregate value of the distributions) made to the individual at the immediately previous relevant time chargeable to tax under Case III(f) of Schedule D (disregarding so much of the distribution, if any, made out of the profits of a financial period of the company, such financial period ending on or before 31st December 2011), less the value of so much of the amount of the distribution, if any, that is exempt from tax under Article 78;

H is the amount (if any) by which the value of Q exceeded the value of P for the purposes of Article 81T(2)(b), 81U(2)(b), 81W(2)(b) or under Step 4 above, at the immediately previous relevant time, as the case may be."

## 6 PAGE 40, ARTICLE 19 –

In the amended Schedule 5 –

- (a) for paragraph 11(2) substitute the following sub-paragraph –

- “(2) In this paragraph –
  - (a) words and expressions shall have the same meanings as such words and expressions have in Articles 81B to 85H, notwithstanding the repeal of those Articles by the Income Tax (Amendment No. 38) (Jersey) Law 2011; and
  - (b) references to a financial period of a company shall include any deemed financial period of the company ending on 31st December 2011 in accordance with Article 81CB, notwithstanding the repeal of that Article by Income Tax (Amendment No. 38) (Jersey) Law 2011.”;
- (b) for paragraph 12(2) substitute the following sub-paragraph –
  - “(2) In this paragraph –
    - (a) words and expressions shall have the same meanings as such words and expressions have in Articles 81B to 85H, notwithstanding the repeal of those Articles by the Income Tax (Amendment No. 38) (Jersey) Law 2011; and
    - (b) references to a financial period of a company shall include any financial period of the company ending on 31st December 2011 that is specified in paragraph 7(4) of this Schedule as if it were a financial period of the company.”.

MINISTER FOR TREASURY AND RESOURCES

## REPORT

### Background

The Draft Income Tax (Amendment No. 41) (Jersey) Law 201- (“Amendment No. 41”) was lodged on 17th October 2012. Part 2 of Amendment No. 41 introduces a set of rules which seek to prevent Jersey resident individuals using Jersey companies to avoid and/or excessively defer a liability to Jersey income tax.

These are a bespoke set of rules which have been designed to address the particular tax planning opportunities which exist in Jersey, whilst not penalising those individuals who choose to structure their affairs through a company.

Following the lodgement of Amendment No. 41, the Tax Policy Unit and Taxes Office have held meetings with a large number of Jersey tax advisers and received a number of representations regarding the operation of the new rules. In response to the feedback received since the rules were lodged, a number of minor changes to Amendment No. 41 are proposed. These changes are outlined below.

### Commercial loans to trading companies (see proposed amendment 1(b))

Before the rules proposed in Amendment No. 41 become operational, the tax-free repayment of loans by companies can be used by shareholders to defer a liability to Jersey income tax. Amendment No. 41 seeks to address this by making the repayment of loans a potentially taxable event (whether it is actually taxable depends on the particular circumstances applying to the shareholder and the company).

A number of representations have been received which suggest that adopting this approach may reduce future commercial investment in trading companies, which may in turn be detrimental to economic growth.

In response to these representations it is proposed to exclude from the definition of “distribution” the repayment of loans where –

- (a) the loan has been made, and for the life of the loan remains, on a “commercial basis”<sup>1</sup>; and
- (b) the loan has been made to, and for the life of the loan remains with, a trading company (or a company in a trading group).

Introducing this exclusion will mean that where a trading company (or a company in a trading group) repays a commercial loan, that repayment will not be a taxable event for the shareholder.

The Taxes Office will closely monitor the use of loans to determine whether the introduction of the exclusion is being abused.

---

<sup>1</sup> The term “commercial basis” will be defined in guidance to be issued by the Comptroller of Taxes.

### **Relief where specified profits have already been distributed (see proposed amendment 2(1)(d))**

Under Amendment No. 41, companies are encouraged to distribute profits in a particular order, such that the same shareholder will not pay tax by reference to the same set of profits twice. In the context of minority shareholders, it is acknowledged that the order of distribution anticipated in Amendment No. 41 is not always achievable, and there is a risk of the same shareholder paying tax by reference to the same set of profits twice, which is not intended. Hence it is proposed to introduce an exemption such that, where a shareholder has paid tax by reference to a particular set of profits, that shareholder is not subject to taxation again on those profits when they are actually distributed.

### **Simplified basis of taxation (see proposed amendment 4)**

Representation has been received that a simplified basis of taxation should be available, by election, for those taxpayers, primarily (but not limited to) the owners of small trading companies, who do not want to complete the calculations contained in Amendment No. 41.

Although the rules in Amendment No. 41 are straightforward to operate for the vast majority of small trading companies, the Minister for Treasury and Resources is keen to assist the owners of small trading companies who do not have the capacity to complete the calculations required under Amendment No. 41.

Under the simplified basis, all distributions received by a shareholder will be fully taxable and hence no calculation will be needed to identify how much is taxable. This treatment is potentially less tax advantageous for the shareholder, if for example the company is distributing capital or previously taxed income, but this could be offset by simplified administration.

It is noted that in the context of a small trading company that distributes its profits on an annual basis and does not accrue capital gains, the amount of tax payable by the owner of that company who elects to apply the simplified basis should be broadly similar to the amount of tax payable by that owner if the calculations required under Amendment No. 41 were completed, whilst delivering an administration saving.

Taxpayers will be able to make an election to apply the simplified basis for year of assessment 2013 at any time up to and including 31st December 2015.

### **Minor improvements to original drafting**

A small number of changes have been identified that would improve the operation of the rules and provide clarification of certain aspects. One minor drafting error has also been identified and corrected.

### **Financial and manpower implications**

There are no financial or manpower implications associated with the proposed changes.