

STATES OF JERSEY



**DRAFT TAXATION
(IMPLEMENTATION)
(INTERNATIONAL TAX COMPLIANCE)
(UNITED KINGDOM) (JERSEY)
REGULATIONS 201- (P.67/2014):
AMENDMENT (P.67/2014 Amd.) –
COMMENTS**

Presented to the States on 17th June 2014
by the Chief Minister

STATES GREFFE

COMMENTS

1. The amendment is not supported for the following reasons.
2. The Intergovernmental Agreement signed by the Government of Jersey and the Government of the United Kingdom on 22nd October 2013 is an important contribution to an ongoing relationship with respect to mutual assistance in tax matters and to improving international tax compliance. It is part of a global commitment to the fight against tax evasion through the automatic exchange of information (AEOI).
3. As stated in a recent OECD Ministerial Declaration signed by nearly 50 jurisdictions, including the Island's competitors of Luxembourg, Singapore and Switzerland –
 - Cross-border tax fraud and tax evasion are serious problems for jurisdictions all over the world, small and large, developed and developing.
 - Co-operation between tax administrations is critical in the fight against tax fraud and tax evasion and in promoting international tax compliance, and a key aspect of such co-operation is effective exchange of information on an automatic basis subject to appropriate safeguards.
4. Jersey's full commitment to joining in the fight against tax evasion is evident in the following actions –
 - Information Jersey is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.
 - Jersey joined in a joint statement issued on 28th November 2013 by 36 countries, and a further statement in March 2014 by 44 countries, committing to the early adoption of the Common Reporting Standard on automatic exchange of information which has been produced by the OECD and adopted by the G20 Finance Ministers at their meeting in Sydney on 23rd/24th February 2014.
 - We have joined with the G8 in the publication of an Action Plan in July 2013 for further enhancing the transparency of the ownership and control of legal persons and legal arrangements. We have engaged in consultation on what, if any, action is called for to build on the leading position that Jersey currently holds, recognised by the World Bank, on access to adequate, accurate and up-to-date information on beneficial ownership through the Company Registry and the licensing of TCSPs.
 - Jersey joined the Multi-lateral Convention on Mutual Assistance in Tax Matters on 1st June 2014: as provided for by the Convention, Jersey is open to approaches from other parties to the Convention to enter into a mutual agreement on AEOI.

- Jersey has been appointed as a Vice-Chair of the AEOI working group of the Global Forum, which will monitor the implementation of the new international standard, as requested by the G20. This is a reflection of Jersey's international standing as a co-operative jurisdiction complying with international standards.
 - Jersey has signed intergovernmental agreements for improving international tax compliance with the USA for FATCA and with the UK FATCA-like regime.
 - Jersey has been rated by the Global Forum as largely compliant, a rating that matches that of Germany, the UK and the USA.
5. This commitment has been recognised internationally, and the Prime Minister of the United Kingdom has said that because of the action taken Jersey should no longer be considered a 'tax haven'. The reputation that Jersey has established has been of great benefit for the finance industry in protecting the Island from the criticism and action taken against non-co-operative jurisdictions. Many of the major financial institutions in the Island have also made it crystal clear that their presence is greatly influenced by the Island's international standing. The loss of this hard-fought-for reputation would be extremely damaging for the Island, something of which the industry is very conscious.
6. Senator Bailhache suggests that there is only a small risk of those who use Jersey who are categorised as resident non-domiciled in the United Kingdom engaging in tax evasion. This is not the view of the UK Government. UK Ministers consider it is most important that the information which the intergovernmental agreement calls for is reported to the UK tax authorities so that the risk of tax evasion can be assessed. A failure to respond to this requirement by not ratifying and implementing the IGA as signed, can be expected to be seen by the UK Government as a serious drawing-back by Jersey from its commitment to join in the fight against tax evasion. This will not be seen as such by the UK alone. The international community generally can be expected to question Jersey's commitment to the fight against tax evasion. Thereby, the good reputation that we have built up, particularly in the past year, will be foregone, with consequences that can be expected to be much more harmful to the Island's future as an international finance centre than might arise from the implementation of the IGA as signed. That this is of great concern to the finance industry is evident from the attached letter received from Jersey Finance Limited (see **Appendix**).
7. Senator Bailhache has referred to the issue of the failure of the UK tax authority to ask for the same information on their tax returns as will be asked for under the provisions of the IGA. However, this cannot be a basis upon which to withhold the co-operation that is so important for the fight against tax evasion. To quote from a letter received from a H.M. Treasury Minister in March 2013: "I have heard the argument that we are requiring the reporting of information which we do not require those who are resident but not domiciled in the UK for tax purposes to report themselves. But automatic exchange of information is not about requiring the reporting of information which should be reported anyway, but rather providing additional information which allows revenue authorities to risk assess for tax evasion."

8. Senator Bailhache has stated that “there is strong evidence that the signature of the UK IGA has caused good business to move away from the Island and that, if this amendment is not adopted, the implementation of the IGA would have additional damaging consequences. “It is not known where this strong evidence has been obtained from, but it is not supported by the views conveyed to Jersey Finance Limited by many in the finance industry, and expressed in the attached letter, who have expressed considerable concern at the wider damage that will be caused if the amendment is adopted.
9. It is true that initially, there was concern that with the IGA, the resident non-domiciled would move their financial accounts to jurisdictions not subject to the same information exchange requirements. However, with the passage of time and clear evidence of the global application of the new standard on automatic exchange of information, this concern has lessened significantly. This is because in the next 2 or 3 years, all of the Island’s main competitors are expected to be complying with the same Common Reporting Standard, and the resident non-domiciled will be faced with the same reporting requirements wherever they move their financial accounts to. If, in the light of this, there are resident non-domiciled persons who are prepared to meet the cost of relocating their financial accounts to enjoy possibly no more than 2 years of lesser information exchange, a number of financial institutions have expressed the view that this apparent desire to avoid a globally accepted degree of transparency is such as to put in question whether these are clients that they or the Island should wish to accommodate.
10. As a result of the global action over the past 6 months, and the prospect of the global application of the new standard of automatic exchange of information, the economic cost of the IGA that was initially of concern can be said to have been lessened significantly. It has removed any justification, if it ever existed, for holding back from honouring the commitment given to the UK when the IGA was signed.
11. From the views obtained from the finance industry, it is clear that the overwhelming majority opinion is that the IGA should be implemented as signed. The view is firmly held that if this is not done, significant damage would be caused to the Island’s reputation. The loss of UK and international support that is so important, as evidenced by the contribution the UK Government made to the successful removal of the Island from the French blacklisting, would far outweigh any damage caused by the limited business loss expected to arise from the implementation of the IGA as signed.
12. In conclusion, therefore, the view is strongly held that Jersey must not give the UK, or the international community generally, grounds for questioning our full commitment to the fight against tax evasion. The limited extent of business loss that is expected to arise from the pursuit of this commitment, much of which could well be business that Jersey has made it clear it has no wish to accommodate, cannot be accepted as a reason for withholding the promised co-operation in engaging in that fight. It was with this in mind that the 3 Crown Dependencies all agreed that a sufficiently mutually acceptable balance has been struck between their interests and those of the United Kingdom. The UK Treasury Minister said in March 2013 that: “in offering an alternative reporting regime for resident non-domiciled persons we believe

that we have appropriately addressed your concerns on capital flight while providing for targeted information flows that will allow us to check for potential tax evasion". This is a shared view which has been further reinforced by the global action over the past year.

13. The adoption of the amendment can be expected to have a serious and damaging impact on the Island's reputation. Both from the withdrawal of the specific commitment to the UK to join with them in the fight against tax evasion, and from the message it would give to the international community that Jersey cannot be relied upon to hold fast to the overriding principle of co-operation in the fight against tax evasion through the automatic exchange of information.

16th June 2014

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

The lateness of this comment is regretted, but it was considered important that the views of those in the finance industry should be heard before the comment was finalised.



16 June 2014

Senator Ian Gorst
Chief Minister
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Dear Chief Minister

1. I am writing in my capacity as Chief Executive of Jersey Finance in response to the Draft Taxation (Implementation) (International Tax Compliance) (United Kingdom) (Jersey) Regulations 201- (P.67/2014): Amendment (the "Amendment") lodged au Greffe on 3rd June 2014 by Senator Sir P.M. Bailhache and to be debated by the States on 17 June.
2. In brief terms the Amendment seeks to reserve information exchange on data pertaining to UK Resident but Non-Domiciled (RND) individuals who choose to avail themselves of the alternative reporting regime enshrined in the UK/Jersey Intergovernmental Agreement (IGA).
3. One of Jersey Finance's core roles is to represent the views of its membership on issues of importance to the finance industry.
4. I have canvassed practitioner views on the Amendment from representatives of each of the main pillars of the industry being banking, private wealth management, funds and capital markets via their respective trade associations. Additionally we have invited comments from those individuals, approximately 65, who have identified themselves as having a particular interest in FATCA.
5. On the basis of the responses received, I believe that the views articulated below are representative of our membership and, thereby, industry at large.

Introduction

6. The IGAs are a critical requirement for Jersey, the continued success of our finance industry, and our relationship both with the UK and the US.

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7. Both institutions and their client base will be put at risk if these agreements are not ratified and translated into law expeditiously.
8. The impact which the Amendment, if passed, would have on our relationship - not only with the UK as our most significant trading partner, but also with international parties in terms of their perception of Jersey as a transparent, compliant and trusted jurisdiction with which to do business - will be seriously damaging.
9. Additionally, the negative economic repercussions arising from the adoption of the Amendment are likely to far outweigh the resulting benefit (if any).
10. Whilst industry are cognisant of – and, indeed sympathetic to - the view that the Amendment simply seeks a level playing field between the RND information gathered respectively by Jersey and the UK, it is felt that there are more potent forces at play which should intervene in guiding the jurisdiction's response.
11. The Amendment needs to be contextualised in terms of the current 'direction of travel' of the transparency agenda and the critical and contemporary policy debate regarding public registries of beneficial ownership information.
12. In adopting the Amendment Jersey would become an outlier. Neither Guernsey nor the Isle of Man would appear to be taking a similar position with regard to their respective IGAs.
13. Externally, in refusing to ratify an agreement to which Jersey has already committed, the interpretation will be that the jurisdiction is somehow 'rowing back' on transparency.
14. In summary, industry consider that the adoption of this Amendment would be harmful to both our reputation and relationship with the UK, have an overall damaging impact on business and produce little or no tangible benefit.

Summary of the proposed Amendment

15. The IGA between the UK and Jersey to improve international tax compliance was signed on 22 October 2013.
16. As currently framed, there is an option in the IGA for an alternative reporting regime (ARR) for RNDs who seek to be taxed in the UK under the remittance basis.
17. In order for this option to be utilised, both the reporting financial institution (e.g. the bank) and the individual have to make an election.
18. If both the institution offers the ARR and the individual elects to use it, the information reported to the UK on the RND's accounts will be less than would be reported if they



were part of the full IGA scheme, but more than the UK would otherwise receive domestically from the tax returns of the RND.

19. What the Amendment will mean in practice, if enacted, is that the ARR will still be available for institutions/individuals, but that the information on RND customers collected by the financial institutions will not then need to be sent onto the Comptroller (for onward transmission to the UK) until such date as the States shall specify.
20. This will leave the UK in the position in which they currently are i.e. where the information they have on RNDs will come from the RND's domestic tax return (supplemented by any information collected via other IGAs e.g. Guernsey).

Use of the ARR

21. Feedback from industry indicates that the majority of our banking community are unlikely to offer the ARR to clients on the basis that it introduces an additional layer of cost and complexity and, in view of the number of accounts concerned, is unlikely to satisfy any cost-benefit analysis.
22. It is not known precisely how many institutions within the private client business community will find it commercially worthwhile to offer the ARR but there could well be a fairly limited number planning to do so.
23. Research indicates that there are approximately 115,000 UK RNDs, with fewer than 5,000 choosing to be taxed on the remittance basis.
24. If we make a broad brush assumption that Jersey services reporting accounts for 20% of those individuals, this would equate to around 1,000 RNDs (although we believe this is overstating the population).
25. Not all of these will wish to avail themselves of the ARR and, even of those that do, their financial institution may not be willing to offer it. As such, the ARR population likely to be affected by the Amendment may well prove to be only a handful of clients.

The transparency agenda

26. At the time of the IGA being negotiated nobody could have predicted the pace at which the move toward universal automatic exchange of information and wider transparency would progress.
27. At the time of negotiation, securing an ARR was seen as significant but the existence of the alternative regime now risks being entirely eclipsed and rendered an anachronism by the subsequent developments in this area.
28. Transparency and automatic tax information sharing with competent authorities is now a fact of life. This has changed the competitive landscape and, we believe, our members' clients have accepted this.

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29. Industry feel we should not be seen to be taking a backwards step if our competitors are moving confidently forward on this issue.
30. The OECD's Common Reporting Standard will be implemented by the 44 Country Early Adopter Group (of which Jersey and the UK are both members) by 1 Jan 2016 or possibly sooner.
31. Approximately 20 further jurisdictions, including significantly Switzerland and Singapore, have given public support to the Common Reporting Standard.
32. In view of such developments, there must be a strong likelihood that the CD and OT IGAs with the UK will be superseded at some point by agreements under the Common Reporting Standard, which by its very nature means there will be no exemption for RNDs. Any advantage that may be achieved via the ARR will therefore be time limited.

External perception

33. Jersey has publicly declared its commitment to the transparency agenda.
34. Particularly over the last 18 months market perceptions on transparency have changed.
35. Our finance industry's future is predicated on not only being, but being seen to be, a transparent and compliant jurisdiction with which to do business.
36. Our signing of both the UK and US IGAs underscores this view.
37. Whilst acknowledging that the ratification of international agreements of this type ultimately rests with the legislature, it would be expensive in terms of reputational value to attempt to re-trade something that the rest of the world rightly considers Jersey already to have agreed.
38. Our detractors, in particular, will seize on any retreat from our transparency commitments.

Loss of Business

39. Industry has indicated to us that any loss of business resulting from the information required to be reported under the IGA in respect of RNDs (whether through the standard or alternative reporting regimes) is, and will be, both minimal and insufficient to cause significant economic damage to Jersey.
40. This view stands contrary to the Report which accompanies the Amendment and, in particular, the assertion that an amount of business is being lost "on a daily basis much of it to Switzerland" as a result of the IGA reporting requirements for RNDs.



41. In our view, it has become clear to RNDs, and perhaps more importantly their advisors, that any differences between disclosure regimes in legitimate jurisdictions are likely to be temporary and it would therefore be imprudent and a questionable use of resource to seek to take any advantage of apparent arbitrage opportunities in this arena.
42. It is considered that such commercial gains as might arise upon the adoption of the proposed Amendment would fast be revealed as nugatory and transient. It is thought most unlikely that such business as has left the jurisdiction for reasons of the ARR will be tempted to return.
43. Indeed, it is thought that the uncertainty which would flow from the Amendment (e.g. as to precisely when the information collected by financial institutions would eventually be passed to the UK), will prove a much more significant factor in *not* using Jersey over other jurisdictions than simply ratifying the IGA as originally negotiated.

Conclusion

44. In summary, feedback indicates that members are not seeing economically damaging business losses, and that both they, their clients and the associated advisory community, have accepted that transparency at the proposed level is now a fact of life.
45. In recent times we have seen a significantly improved relationship with the UK, primarily as a result of the commitments made at the G8 and the "Jersey's Value to Britain" research undertaken by Capital Economics.
46. We would not wish to see any move undertaken in the name of industry and its clients in this arena that could jeopardise this relationship, most particularly where the issue is not felt sufficiently critical to justify the loss of goodwill that would result from pulling back on our international commitments.
47. This anxiety is only heightened by the number of more pressing and impactful agendas on which we may require or otherwise seek UK support, including ICB Vickers, the collection of beneficial ownership information, Public Registers, membership of SEPA, QROPS and the draft Fourth Money Laundering Directive.

I appreciate you taking the time to reflect on industry views on this matter. I would be more than willing to meet in person to further expand on the points articulated.

Yours sincerely

Geoff Cook
Chief Executive

cc: Senator Sir Philip Bailhache
Senator Philip Ozouf
Senator Alan Maclean

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