

# STATES OF JERSEY



Jersey

## **DRAFT INCOME TAX (AMENDMENT OF LAW – TAXATION OF CANNABIS COMPANIES) (JERSEY) REGULATIONS 202-**

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**Lodged au Greffe on 11th October 2021  
by the Minister for Treasury and Resources  
Earliest date for debate: 23rd November 2021**

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**STATES GREFFE**



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## REPORT

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### Introduction

Revenue Jersey has been a member of the cross-government Cannabis Co-ordination Group since 2019. The Government Plan 2020-23<sup>1</sup> indicated that consideration was being given to taxing the profits of companies in the cannabis industry at a positive rate of income tax. Under existing rules, any potential profits of these companies would be subject to the standard rate of corporate income tax at 0%.

As part of the [Finance \(2021 Budget\) Law 2021](#), an amendment was made to the [Income Tax \(Jersey\) Law 1961](#) (the “ITL”) to create a power for Regulations to be made for the purposes of taxing those companies. This was signposted in the Government Plan 2021-24.<sup>2</sup> During 2021 the [Revenue Policy Development Board](#) decided that companies within the cannabis industry should be subject to income tax at the rate of 20%.

The purpose of this proposition is to bring forward Regulations to ensure that any profits made in respect of specified activities are brought into the charge to tax at 20% from the year of assessment 2022.

Companies that fall within the scope of these provisions are referred to in this report as “cannabis companies”.

### Licences issued to cannabis companies

It should be noted that the medicinal cannabis industry in Jersey is highly regulated and as a result the effect of these amendments would only impact a handful of companies. At the time of writing, two licences for the cultivation of medicinal cannabis have been issued by the Minister for Health and Social Services.

Applicants for licences are subject to stringent requirements, including an assessment by the UK Home Office, which produces a report for the Minister for Health and Social Services after meeting with the applicants and conducting a joint site inspection visit. The Minister for Health and Social Services reviews the Home Office report and the application before any decision is made as to whether a licence is issued.

### Overview of the Draft Regulations

The main effect of the Draft Regulations is to amend provisions in the ITL so that a company undertaking defined activities would be subject to income tax at 20% rather than 0%.

Income tax would be applied to all the profits or gains arising in a year of assessment, even if the company undertook other activities not related to the cannabis industry. There would be no opportunity for ‘income streaming’, where particular activities of the same company are taxed at different rates (see comparison with Guernsey in the **Appendix**).

Cannabis companies would be subject to the same business taxation principles as other companies. This includes the existing rules concerning expenses and capital allowances. There would be no special rules or exceptions, but it should be noted that while capital allowances are not usually permitted in respect of land or buildings, capital allowances

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<sup>1</sup> [Government Plan 2020-23](#), p.166

<sup>2</sup> [Government Plan 2021-24](#), p.153

at a lower rate of 10% (rather than the usual rate of 25%) are permitted in respect of glasshouses.<sup>3</sup>

### Details of the Draft Regulations

*Regulation 1* provides that the draft Regulations amend the ITL.

*Regulation 2* adds cannabis companies to an existing list in Article 123C of the ITL, which would bring them in line with other companies that are not subject to tax at 0%, such as financial services companies and utility companies. *Regulation 2* also consequentially amends the heading of Article 123C of the ITL.

*Regulation 3* creates Article 123DA in the ITL, which defines the activities that, if undertaken by a company, would bring it within the scope of corporate income tax at 20%. A company that grows cannabis plants, or that processes cannabis plants for any purpose, would be in scope of the new provisions.

*Regulation 3* also introduces a definition of “cannabis plant”, which is taken from the definition of “cannabis” in the [Misuse of Drugs \(Jersey\) Law 1978](#). However, the definition specifically excludes “industrial hemp”, which is grown using cannabis plants that have low values of the psychoactive constituent *tetrahydrocannabinol* (commonly known as THC). The purpose of the Draft Regulations is to bring within scope the cannabis plants that have higher levels of THC.

These Draft Regulations do not impose income tax on retail activities relating to cannabis products, meaning that companies in Jersey that sell products containing cannabis or derivatives of cannabis would not fall within the scope of the provisions. However, any company connected to a taxable cannabis company that sells those products would be within scope. This is to prevent taxable cannabis companies from establishing a separate company for retail-only purposes.

*Regulation 4* provides that the Regulations come into force on 1 January 2022, which would enable any profits made in the year of assessment 2022 to be subject to income tax.

The Minister expects further amendments to the provisions to be made in 2022 and beyond, as the cannabis industry develops and as Government policy evolves.

### Financial and manpower implications

The taxation of companies in the cannabis industry is one of the measures that has been forecast to help balance budgets by 2024. It is not yet possible to forecast how much tax will be raised from these measures because the industry is in its early stages and forecasts would be speculative.

Minor changes have already been made in the background to Revenue Jersey’s computer systems to ensure that companies are subject to tax at 20% in the event these Draft Regulations are adopted. There are no additional financial or manpower implications for Revenue Jersey or the Treasury in collecting any additional revenue.

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<sup>3</sup> Income Tax (Jersey) Law 1961, Article 106B

## APPENDIX

### Taxation of cannabis industries in other jurisdictions

#### Guernsey

With effect from 1 January 2020 Guernsey extended the higher rate of tax (20%) to the income arising to companies carrying on defined activities within the cannabis industry. The higher rate applies to:

- (a) income from the licenced activity of cultivation of cannabis plants, and income from the use of those cannabis plants or parts of those cannabis plants for –
  - i. any licensed production of industrial hemp, supplements, CBD, fibre, medicinal products or other products,
  - ii. any licensed processing, or
  - iii. any other licensed activity or use; and
- (b) where prescribed by regulations of the Policy and Resources Committee, income from –
  - i. the licensed production of controlled drugs, and
  - ii. the used of those controlled drugs for any activity or use.

It should be noted that under the Guernsey system for the taxation of companies a rate of tax is applied to defined sources of income. Accordingly, a company which carries on more than one activity may suffer different rates of tax on each of those activities. This method of taxation is sometime known as income streaming. Jersey does not follow this model of taxation.

#### United Kingdom

The Home Office licences businesses to cultivate cannabis plants in the UK. Licences are granted for the cultivation of hemp (with low THC) for use of the non-controlled parts (i.e. seeds and stalks) of plants for the production of hemp fibre or oil.

Licences will also be issued for the cultivation of cannabis with high THC for medical testing. Companies in the UK pay corporation tax at the rate of 19% (fiscal year starting 1 April 2021).

#### Isle of Man (IOM)

The IOM Government issued a public consultation in February 2019<sup>4</sup> entitled “Changes to allow Industrial Hemp production” seeking views on a regulatory framework for the cultivation of industrial hemp in the IOM.

The feedback report was published in June 2019. The consultation received 1,012 responses, the majority from individuals. 97% of respondents supported the introduction of a regulatory framework within which industrial hemp production could be permitted.

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<sup>4</sup> <https://consult.gov.im/health-and-social-care/industrial-hemp/>

The responses from the consultation are to be made available to politicians to consider the next steps.

Accordingly, the IOM does not currently require any tax rules relating to the cultivation of cannabis.

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## EXPLANATORY NOTE

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These Regulations, if adopted, would amend the Income Tax (Jersey) Law 1961 (the “Income Tax Law”) to provide for the taxation of companies in the cannabis industry.

*Regulation 1* provides that these Regulations amend the Income Tax Law.

*Regulation 2* amends Article 123C of the Income Tax Law. Article 123C provides that the tax rate that applies to all but certain excluded types of companies is 0%. Regulation 2 adds an exclusion for companies in the cannabis industry. Regulation 2 also amends the heading of Article 123C so that it better reflects the content of the Article.

*Regulation 3* inserts a new Article 123DA into the Income Tax Law. New Article 123DA defines what it means for a company to be in the cannabis industry. A company is in the cannabis industry if it cultivates or processes cannabis plants (as defined in the Article) or if it undertakes certain other activities with cannabis plants that have been cultivated or processed by a connected company.

*Regulation 4* gives the title of these Regulations and provides that they come into force on 1st January 2022.

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### Re-issue Note

This Project is re-issued to correct a typographical error in Regulation 3. In the inserted Article 123DA, paragraph (1), the reference “Article 123(1)(b)(iv)” is changed to “Article 123C(1)(b)(iv)”.







Jersey

## **DRAFT INCOME TAX (AMENDMENT OF LAW – TAXATION OF CANNABIS COMPANIES) (JERSEY) REGULATIONS 202-**

*Made* [date to be inserted]  
*Coming into force* [date to be inserted]

**THE STATES** make these Regulations under Article 143AA of the [Income Tax \(Jersey\) Law 1961](#) –

### **1 [Income Tax \(Jersey\) Law 1961](#) amended**

These Regulations amend the [Income Tax \(Jersey\) Law 1961](#).

### **2 Article 123C (non-financial services companies) amended**

(1) For the heading to Article 123C there is substituted –

**“123C Tax rate for companies”.**

(2) After Article 123C(1)(b)(iii) there is inserted –

“(iv) a company in the cannabis industry (as defined in Article 123DA).”.

### **3 Article 123DA (companies in the cannabis industry) inserted**

After Article 123D there is inserted –

**“123DA Companies in the cannabis industry**

(1) A company is in the cannabis industry for the purpose of Article 123C(1)(b)(iv) if it carries on one or more of the following activities –

- (a) cultivates cannabis plants;
- (b) processes cannabis plants for any purpose;
- (c) distributes, sells or further processes cannabis plants that have been cultivated or processed under paragraph (a) or (b) by a connected company.

- (2) In this Article –
- “cannabis plant” –
- (a) has the meaning given to cannabis by Article 1(1) of the [Misuse of Drugs \(Jersey\) Law 1978](#); but
  - (b) does not include industrial hemp;
- “industrial hemp” means a cannabis plant with a tetrahydrocannabinol content not exceeding 0.2%, cultivated for the purpose of using only –
- (a) the mature stalk of the plant;
  - (b) fibre produced from the mature stalk of the plant; or
  - (c) the seed of the plant.”.

#### 4 Citation and commencement

These Regulations may be cited as the Income Tax (Amendment of Law – Taxation of Cannabis Companies) (Jersey) Regulations 202- and come into force on 1st January 2022.