

THE NEW TAX REGIME IN JERSEY

Introduction

As part of Jersey's agreement with the European Union in connection with the European Tax Package in 2003, Jersey committed to make changes to its tax regime as from 3 June 2008. These changes include the introduction of a general rate of corporate income tax of 0% and the phasing out of exempt company status.

The changes are not expected to have any effect on the Jersey tax neutrality of companies that would have qualified as exempt companies had they been incorporated or become resident in Jersey prior to 3 June 2008, i.e. they will continue not to pay income tax in Jersey.

The 0% tax rate applies from 3 June 2008 in respect of companies incorporated or first becoming resident in Jersey on or after that date, and such companies will not be permitted to elect for exempt company status. Companies which held exempt company status prior to that date maintained that status until 31 December 2008, but thereafter the 0% rate applies to them. The 0% rate does not apply to a small category of Jersey regulated financial services companies or to certain domestic Jersey utility companies.

The purpose of this briefing is to summarise the 0% tax regime and the arrangements for the phasing out of exempt company status.

The Previous Regime - Exempt Company Status

Exempt company status was available to companies (whether or not incorporated in Jersey) in respect of which there were no Jersey resident beneficial owners or which were collective investment funds. The conditions to obtain and maintain the status included a requirement to disclose the ultimate beneficial ownership of the company to the Jersey Financial Services Commission (JFSC) save in the case of collective investment funds, which were exempt from that requirement) and to pay an annual fee of £600. The consequence of having exempt company status was that the company was deemed, for the purposes of Jersey income tax, not to be resident in Jersey even though it may have been incorporated and/or managed and controlled in Jersey. In turn this meant that the company would not be liable to pay Jersey income tax save in respect of profits arising from an established place of business in Jersey and on rental income arising in Jersey. By concession, it would not pay any income tax on interest arising from bank deposits in Jersey. It would not be required to withhold tax from any dividends or interest payments made by it.

The New Regime – The 0% rate

Under the new regime, a company which is resident in Jersey or which has a permanent establishment in Jersey and which is not (i) a "financial services company" having a permanent establishment in Jersey; or (ii) a specified utility company, is charged to tax in Jersey at the rate of 0%. Such companies are not entitled, when making a dividend or interest payment, to make any deduction in respect of Jersey tax. For these purposes, a company is regarded as resident in Jersey if it is incorporated in Jersey or its business is managed and controlled in Jersey.

The limited exception to this is a Jersey company, which is:

- Managed and controlled outside Jersey in a country or territory where the highest rate at which the company may be charged to tax on any part of its income is 20% or higher;
- Resident for tax purposes in that country or territory. The expression "financial services company" refers to a company, which is licensed by the JFSC under the FS Law to carry out:
- Investment or trust company business through a permanent establishment in the Island or
- Banking business through a permanent establishment in the Island or
- The business or trade of funds administration or funds custodian through a permanent establishment in the Island

The New Regime – The 10% rate

Such financial services companies are liable to Jersey tax at a rate of 10%, although it should be noted that the companies subject to that rate are restricted to those with a permanent establishment in Jersey. For these purposes, the fact that the directors of a company regularly meet in Jersey would not make their meeting place a permanent establishment. Therefore the 10% rate is, in practice, only applicable to the comparatively small number of companies that have physical operations in Jersey and which are licensed under the above mentioned financial regulatory laws.

The New Regime – The 20% rate

Specified utility companies are liable to Jersey tax at a rate of 20%. The specified utility companies are the Jersey domestic water, gas, electricity, telephone and postal companies.

The 20% rate will also apply to rental income arising in Jersey and to trade of property development where the land, building or structure is in Jersey.

Main Differences between the Previous Regime and the New Regime

The main differences are as follows:

- The applicability of the 0% rate is not dependent on the absence of Jersey resident beneficial owners, whereas the availability of exempt company status could (save in the case of collective investment funds and certain concessionary cases) be lost by the presence of a Jersey resident beneficial owner.
- There is no requirement to pay an annual charge of £600 under the new regime. Note, however that companies that would have been exempt companies will usually wish to opt for "international services entity" status in order to ring fence themselves from Jersey's new sales tax regime (GST) which, except for certain regulated companies, entails payment of an annual charge of £100. See our separate client guide in respect of GST.
- Disclosure of information concerning Jersey resident shareholders will be required to be made in an annual tax return filed with the Jersey Comptroller of Income Tax, save in the case of collective investment funds and unregulated funds. Requirements to disclose to the JFSC the ultimate beneficial ownership of a company incorporated in Jersey remain, though such disclosures are not, under the new regime, a condition of the tax status of the company.
- As before, Jersey resident individuals are liable to pay tax at the rate of 20% on their income. There are new anti-avoidance provisions aimed at ensuring that such Jersey resident individuals do not use the 0% tax regime to shelter income from tax. For example, in certain cases, such individuals who are beneficial owners of more than 2% of the shares of a company may be taxed as if they had received a dividend from the company unless the company pays dividends over a prescribed level or may be
- Taxed as if the individual's portion of the profits of the company was the individual's own. These provisions do not apply to collective investment funds.

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This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact either Kathy Gillen or Michael Goubert:

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June 2010