# JERSEY INTERNATIONAL BUSINESS COMPANY

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## Introduction

The Jersey authorities have approved legislation to introduce with effect from 1st January 1993 a type of company not previously available in Jersey. The new company will be known as an international business company ("IBC"). It will be resident in Jersey for tax purposes but will pay tax at 2% or less on profits from international activities. IBCs may only be owned by non-residents, or by a resident company that is, itself, wholly owned by non-residents.

## Rationale and Advantages

Until now Jersey has only been able to offer two types of company. A resident company pays income tax at 20% on all its profits wherever arising. An exempt company is not resident in Jersey for tax purposes and pays an amount of £500 per year regardless of the level of its profits. With the exception of collective investment schemes, exempt companies may only be owned by non-residents. An exempt company does, however, pay income tax on income arising within the Island with the exception, by concession, of bank interest.

Professional advisers have been able to persuade the authorities that what has been missing is a resident company paying tax at a very low rate. It is hoped that the IBC will be useful in the following types of situations:

> In an international structure where it is important to show that a particular company is resident somewhere and a low rate of tax is an acceptable cost.
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> Where participation exemption is available in respect of dividends paid out of profits which have been subject to any level of tax (and the flat rate exempt company fee would not have satisfied this). Also where IBC status is granted to a branch of a foreign company

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exemption from tax may be available in the head office territory. This may well be a useful arrangement to overcome Jersey's lack of an international treaty network. Dividends or branch profits could be paid, say, to Holland with no further tax being payable there. Dividends could then be paid on under Holland's treaty network. It remains to be seen how well this will work in practice.

In property developments in the UK where previously a Jersey resident company has been used to obtain treaty relief in the UK and then most of the profits have been stripped out by way of a management charge.

Where a physical presence is required in Jersey an exempt company would not be suitable, as the existence of the company's own establishment would have brought the trading profits attributable to that establishment into the Jersey tax net. The authorities have indicated that negotiation will be possible regarding the quantum of profits which are to be treated as arising from international activities. Anyone considering endeavouring to utilise this facility should take local advice first.

The authorities hope in particular that IBCs will be attractive to international groups requiring a location for group treasury operations.

However, the authorities decided there was no need to make IBCs suitable vehicles to satisfy the UK controlled foreign company criteria and the Swedish 15% rule. They therefore resisted the request that the rate of tax should be variable above the 2% figure. The authorities pointed out that the average rate of tax paid by an IBC would depend upon its mix of international profits and local profits. Companies would therefore be able to achieve their desired rate by regulating amounts of money on deposit in Jersey. This decision was, however, taken well before the UK 1993 Budget in which the definition of a low tax area for CFC purposes was increased from less than one-half to less than three-quarters of the UK rate. Therefore, even a Jersey income tax company will not satisfy the new requirement and an IBC will obviously not be able to achieve a rate higher than 20%. It remains to be seen whether the authorities will reconsider this matter.

## Setting up an IBC

In general, existing companies will not be able to apply for IBC status. An IBC must be specifically set up as such. If IBC status is lost in any year through failure to comply with the administrative arrangements it will not be possible to regain it subsequently.

Official approval has to be obtained before a company can be set up as an IBC. The nature and scope of the proposed activities will have to be disclosed to the authorities together with the likely division between international business profits and Jersey income. The authorities will also bear in mind the estimated tax yield. This information will enable the Finance and Economics Committee to consider whether the non-tax regulations contained within the Control of Borrowing (Jersey) Law 1958 (as amended) and the Regulation of Undertakings and Development (Jersey) Law 1973 (as amended) have been satisfied.

Disclosure will also have to be made to the Financial Services Department of the names and addresses of the ultimate beneficial owners. Where the company is owned by a trust then the names of the trustees and names and addresses of the settlors and people who have provided funds must also be given to the authorities.

After the company has been incorporated it will receive a form from the Tax Office asking for various information and the form includes an application for IBC status. That should be returned to the Tax Office together with a cheque for £1,200, being advance payment of income tax, by 31st October or within three months of incorporation if later.

## Companies Incorporated Overseas

Companies incorporated outside Jersey may be used as IBCs if so desired but the Jersey authorities will still require to be satisfied with regard to beneficial ownership. It will also be possible to set up as an IBC a branch of a non-resident company. Similar time limits apply regarding application for IBC status with the time commencing to run when the company becomes resident in Jersey for tax purposes or the branch commences activities.

## Annual Procedure

Early each year existing holders of IBC status will be sent an application form for IBC status for that year. The form requires a declaration that the beneficial owners are not resident in Jersey and that changes in beneficial ownership have been reported to the Financial Services Department.

The form together with a cheque for £1,200 advance tax has to be sent to the Tax Office by 31st October.

## Tax Position

An IBC is resident in Jersey for tax purposes but subject to a special regime.

The IBC is taxed at special rates in respect of income from international activities, i.e., activities outside Jersey. The rates are as follows :

| **Income** | **Tax rate %** |
|---|---|
| First £3 million | 2.0 |
| Next £1.5 million | 1.5 |
| Next £5.5 million | 1.0 |
| Remainder | 0.5 |

As indicated, a credit is given for the £1,200 paid in advance. However, there is no provision for repayment in the event of the tax liability being less than £1,200 and there is no apportionment of the £1,200 in the year of commencement or cessation.

Jersey source income is taxed at 20%. This includes Jersey bank interest, although it is understood that trading companies may be able to show that the interest is ancillary to international activities and thus taxed at the low rate.

IBCs will be taxed under Schedule D Case VI on an actual basis. In practice, assessments will be based on the accounting period ending in the year of assessment.

There will be no relief for losses.

Interest paid by an IBC will be paid without deduction of tax. Deduction of tax at source is neither obligatory nor possible. Relief will be allowed for interest paid either as a management expense or in calculating profits chargeable to tax.

Dividends will be payable from after-tax profits of the company. There is no separate withholding tax. In the unlikely event of a shareholder seeking relief or repayment of tax suffered in connection with the dividend, relief will be limited to the average rate of tax payable by the company.

As an IBC will be resident in Jersey for tax purposes, the remuneration paid to non-resident directors in respect of duties performed in the Island, such as attending board meetings, will strictly be liable to tax. However, the liability will not be pursued.

**Conclusions**

Although Jersey carries out a significant amount of private client business, the Island is comparatively little used and often overlooked in international corporate structures. No doubt the lack of an international double tax treaty network has been a significant factor. The Jersey authorities have reacted swiftly to requests from the profession for this new company. It is hoped international tax advisers will make use of it.