

# THE TAXATION OF JERSEY COMPANIES IN JERSEY

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## **Introduction**

Significant changes have recently been made to the system of corporate taxation in Jersey. These changes include the introduction of a standard rate of corporate income tax of 0% and the phasing out of exempt company status. The new regime is simply referred to in Jersey as “zero/ten”. The “zero/ten” regime is intended to comply with the EU Code of Conduct for Business Taxation and the new regime promotes equal tax treatment between companies.

## **The End of Exempt Company Status**

Previously, exempt company status was available to any company (whether or not incorporated in Jersey), provided it did not have any Jersey resident beneficial owners.

Broadly, in order to obtain exempt company status, the ultimate non-Jersey beneficial ownership of the company had to be disclosed to the Jersey Financial Services Commission and an annual fee of £600 paid.

The key advantage in obtaining exempt company status was that the company was deemed for the purposes of Jersey taxation not to be resident in Jersey (even if the company was incorporated in Jersey and/or managed and controlled in Jersey).

Consequently, a company with exempt company status would not be liable to pay Jersey income tax on any profits other than in respect of Jersey source income excluding, by concession, bank interest.

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In addition, a company with exempt company status would not be obliged to make any withholding on account of tax from any interest payments made by the exempt company to any person.

Under the “zero/ten” regime, however, exempt company status is no longer available and as from 1 January 2009 all companies have become subject to the new corporate tax regime.

### **The Standard Rate of 0%**

Under the “zero/ten” regime and subject to certain exceptions, a company which is resident in Jersey or which has a permanent establishment in Jersey is charged income tax at a rate of 0%.

A company is regarded as being resident in Jersey if it is incorporated in Jersey or if its business is managed and controlled in Jersey. However, a company incorporated in Jersey will not be tax resident in Jersey if it is managed and controlled in another country, it will be tax resident in that country and subject to the corporate tax regime, and rates of tax, of the country in which it is managed and controlled.

Permanent establishment is defined in the Income Tax (Jersey) Law 1961 (the “**Income Tax Law**”) to include a branch of the company, a factory, shop, workshop, quarry or a building site and a place of management of the company but the definition expressly states that “the fact that the directors of a company regularly meet in Jersey shall not, of itself, make their meeting place a permanent establishment.”

The exceptions to the 0% standard rate concern (a) certain financial services companies with a permanent establishment in Jersey, (b) certain Jersey utility companies and (c) profits derived from Jersey rental income and Jersey property development. These exceptions are outlined below.

Zero-rated companies will still need to complete a Jersey income tax return. In completing this form, the company will confirm that it qualifies for the zero corporate income tax rate.

### **Financial Services Companies**

Certain “financial services companies” which have a permanent establishment in Jersey do not pay income tax at the 0% rate but instead have to pay income tax at a rate of 10%.

This distinction between the 0% rate and the 10% rate is why the new regime is commonly referred to as “zero/ten”.

A “financial services company” is defined in the Income Tax Law to mean a company that:

- is registered under the Financial Services (Jersey) Law 1998 (the “**FSL Law**”) to carry out investment business;
- is registered under the FSL Law to carry out trust company business;
- is registered under the FSL Law to carry out fund services business as an administrator or custodian in relation to an unclassified fund or an unregulated fund;
- is registered under the Banking Business (Jersey) Law 1991; or
- holds a permit under the Collective Investment Funds (Jersey) Law 1988 by virtue of being a functionary who is an administrator or custodian.

It is worth noting that not all regulated companies are caught by the 10% rate. For example, it does not catch insurance companies or companies who act as fund managers.

In practice, the 10% rate is only going to be relevant to a comparatively small number of companies that have a permanent establishment in Jersey.

### **Utility Companies**

Although the tax regime is commonly referred to as “zero/ten”, certain Jersey utility companies are taxed at a rate of 20%.

The Jersey utility companies that have to pay income tax at the rate of 20% are as follows:

- the Jersey New Waterworks Company Limited;
- the Jersey Gas Company Limited;
- the Jersey Electricity Company Limited;
- any person licensed to run a public telecommunications system under the Telecommunications (Jersey) Law 2002; and

- any person authorized to convey letters by a licence granted under the Postal Services (Jersey) Law 2004.

### **Jersey Rentals and Property Development**

Despite the name “zero/ten”, profits derived from any rental income of Jersey land and any profits derived from any commercial property development of Jersey land are taxed at a rate of 20%.

### **Jersey Resident Individuals: Deemed Dividends**

Jersey resident individuals are liable to pay income tax at the rate of 20% (and many of the previous exemptions and reliefs applicable to individuals have been, and continue to be, phased out to ensure that most individuals are taxed at the top rate of 20%).

The introduction of “zero/ten” has caused a significant reduction in tax revenues collected by the States of Jersey.

To mitigate this shortfall (and also to ensure that Jersey individuals cannot use the “zero/ten” regime to shelter profits from taxation), tax is charged on Jersey resident individuals on the profits of companies in which they hold shares where the companies are taxed at 0% or 10% under the “zero/ten” regime.

The Jersey resident individual shareholder will have to pay tax irrespective of whether the profits of the company are actually distributed to the Jersey resident individual shareholder. In other words, the shareholder has to pay tax on a “deemed” dividend rather than on an actual dividend.

These “deemed” dividend provisions are complex and a full analysis of these provisions is outside the scope of this article. However, they are set out, in broad terms, in the following paragraphs.

Where a Jersey trading company (which is defined in the Income Tax Law to exclude a collective investment fund) is taxed at 0%, it will be deemed to have distributed, by way of interim dividend, 60% of its taxable profits for each relevant accounting period. Any Jersey resident individual who holds more than 2% of the ordinary shares in such a company will have to pay personal income tax at a rate of 20% on his or her share of this “deemed” interim dividend.

In addition, a Jersey trading company (which, as noted above, excludes a collective investment fund) is taxed at 0%, it will be deemed to have paid a final dividend representing its accumulated taxable profits since the company became subject to the

“zero/ten” regime on certain trigger events. Any Jersey resident individual who holds more than 2% of the ordinary shares in such a company will have to pay personal income tax at a rate of 20% on his or her share of this “deemed” final dividend. The trigger events include:

- the Jersey individual ceasing to own more than 2% of the ordinary share capital of the company;
- the winding up of the company;
- the death of the Jersey individual; and
- the Jersey individual ceasing to be resident in Jersey.

Where a company is taxed at 0% and it is not a Jersey trading company or a collective investment fund (e.g. the company is a non-trading holding or investment company), all of the company’s profits will be attributed to the shareholders of the company for each relevant accounting period. Any Jersey resident individual who holds more than 2% of the shares in such a company will have to pay personal income tax at a rate of 20% on his or her share of these profits as if the profits were those of the individual.

Where a Jersey financial services company is taxed at 10%, a “deemed” dividend regime also applies. However, the “deemed” dividends do not apply on an interim basis for each accounting period. Instead, there is only a final “deemed” dividend on the occurrence of certain trigger events. Any Jersey resident individual who holds more than 2% of the ordinary shares in such a company will have to pay personal income tax on his or her share of this “deemed” final dividend. The trigger events are the same as those that apply to the final “deemed” dividend of a Jersey trading company (which are described above).

A financial services company will already have been taxed at 10% on its profits. Therefore, a Jersey resident individual shareholder will be given a tax credit equal to the tax paid by the company on the profits out of which the “deemed” final dividend is treated as having been paid. In effect, therefore, the Jersey resident individual will only have to pay a 10% tax charge (and not a 20% tax charge) due to the benefit of this tax credit.

No additional tax is payable by Jersey individual shareholders on company profits that have already been taxed at 20%. Thus, for example, the “deemed” dividend regime does not apply to Jersey utility companies as these companies will have already paid tax on their profits at the rate of 20%.

It is worth noting that the “deemed” dividend provisions only relate to ordinary shares and do not catch preference shares. It is also worth noting that the “deemed” dividend provisions do not apply to collective investment funds.

Individuals who have paid tax on a “deemed” dividend and who subsequently receive an actual dividend will obtain a tax credit in relation to the tax payable on the actual dividend.

### **Withholding Tax**

Under the “zero/ten” regime, no Jersey company will be obliged to make any deduction on account of any Jersey tax from any interest payments made by the Jersey company.

Article 87 of the Income Tax Law which potentially imposed a withholding tax on certain interest payments has been amended such that this Article (as from 1 January 2009) only applies to interest payments made by an individual resident in Jersey.

### **Other Taxes**

Under current Jersey law, there are no capital gains or inheritance taxes. No Jersey stamp duty is levied on the transfer of shares, units in a unit trust or interests in a limited partnership although a local tax has recently been introduced by the Taxation (Land Transactions) (Jersey) Law 2009 on the transfer of shares in a Jersey company where those shares confer a right to occupy local real property. A goods and services tax is also levied on the supply of certain goods and services and the current rate of this tax (which is similar to the English value added tax) is 3%.

### **Conclusion**

A key advantage in using a Jersey company under the old exempt company regime was that the Jersey company would not pay any Jersey income tax. In this way, Jersey offered a tax neutral choice for the international investors in a company. Under the new regime, this tax neutrality is preserved as companies that had enjoyed exempt company status (or which could have applied for exempt company status) should be taxed at the rate of 0%.

Only certain companies will actually have to pay Jersey income tax (being certain financial services companies, certain Jersey utility companies and companies in receipt of Jersey rental and/or Jersey property development profits). Indeed, there are additional advantages under the “zero/ten” regime for companies that had previously enjoyed exempt company status. First, no annual fee will need to be paid

to the Jersey authorities in order to secure tax neutrality (whereas under the old exempt company regime an annual fee of £600 had to be paid to the Jersey authorities in order to maintain exempt company status). Secondly, exempt company status could have been threatened if the company had at any time a Jersey resident shareholder. In contrast, the existence of a Jersey resident shareholder will not affect the standard 0% tax rate applying to companies (although that Jersey resident shareholder may be taxed on “deemed” dividends as outlined above).