

Jersey Taxation of Investment Vehicles

Outline

The principal Jersey tax statute is the Income Tax (Jersey) Law 1961 (as amended) (the “**Income Tax Law**”) which determines the rate of Jersey income tax payable by Jersey investment vehicles.

Under current Jersey law, there are no capital gains, capital transfer, gift, wealth or inheritance taxes or any death or estate duties.

No stamp duty is levied in Jersey on the issue, conversion, redemption or transfer of shares, limited partnership interests or unit trust units. Generally, stamp duty is only levied in Jersey on certain court documents and certain documents relating to Jersey real property.

On the death of a private individual investor (whether or not such individual was domiciled in Jersey), duty will be payable on the registration of any Jersey probate or letters of administration which may be required in order to transfer, convert, redeem or make payments in respect of, Jersey shares, limited partnership interests or unit trust units held by the estate of such deceased individual sole shareholder. There is a small estates exemption from the requirement for probate or letters of administration of £10,000 in respect of the relevant Jersey assets.

Jersey Companies

With the aim of ensuring compliance with the European Union’s Code of Conduct on Business Taxation and Jersey’s policy of positive international relations with the EU and others, Jersey replaced its exempt company regime with a general corporate rate of income tax of zero per cent on 1 January 2009. The change will not affect the Jersey tax neutrality of these vehicles.

When is a company Jersey tax resident?

A company will be Jersey tax resident for the purposes of the Income Tax Law if it is incorporated in Jersey or, if incorporated elsewhere, its business is managed and controlled in Jersey.

Notwithstanding the general rule that Jersey incorporated companies are treated as Jersey tax resident, a Jersey incorporated company will be entitled to be regarded as exclusively tax resident elsewhere if its business is managed and controlled in a jurisdiction other than Jersey, it is tax resident in that jurisdiction and the highest

rate of corporate income tax in that jurisdiction is 20% or higher.

The Zero-Rated Regime

The Income Tax Law has been amended with the effect that the distinction between exempt companies and Jersey tax-paying companies (and the exempt company regime itself) disappeared on 1 January 2009. All Jersey companies (and non-Jersey companies managed and controlled in Jersey) are now chargeable to Jersey income tax from 1 January 2009. Subject to the limited exceptions set out below, the general rate of Jersey corporate income tax is set at zero per cent.

The following limited exceptions to the general corporate income tax rate of zero per cent apply:

- certain specified domestic Jersey utility companies are charged to Jersey income tax at a rate of 20% (comprising the Jersey gas, water, electricity, postal and telecoms utilities);
- income derived from leasing or ownership of Jersey land will continue to be charged to Jersey income tax at a rate of 20%; and
- certain “financial services companies” are charged to Jersey income tax at a rate of 10%.

For these purposes, “financial services companies” are Jersey tax resident companies which are regulated in Jersey either: as banks; as administrators or custodians of collective investment funds; or as authorised to carry out trust company or investment business. Such administrators, custodians, investment businesses and trust companies will only be chargeable to Jersey income tax at the 10% rate if they carry on that business through a permanent establishment in Jersey.

Permanent establishment entails a physical presence in Jersey or a place of management of the company, but the fact that the directors of a company regularly meet in Jersey will not, of itself, make their meeting place a permanent establishment. Nor will the exercise of clerical functions such as invoicing operations, management and administration services or the entering into of contracts in respect of a company’s international business (to include, for example, swap financing and loan funding agreements) at the address of the company’s registered office amount to carrying on business through a permanent establishment in Jersey for these purposes.

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The 10% rate is, in practice therefore only likely to be of relevance to the comparatively small number of companies that have a physical presence in Jersey and which carry out the regulated functions listed above. In the investment fund context, it is important to note that the corporate investment fund itself is subject to the zero rate and that many investment management companies will also qualify for Jersey taxation at that rate. Please refer to our client briefing on Jersey Investment Management Companies for further information at the following address: www.ogier.com.

Dividends

Jersey companies chargeable to corporate income tax at the zero per cent rate are not obliged or entitled to deduct withholding tax on dividends. This will apply to the vast majority of investment companies.

Where companies are chargeable to Jersey income tax at the 10% or 20% rates, dividends will be paid to shareholders following the payment of such tax by the company. The Jersey income tax paid on the company's income represented by such dividend will be available to the relevant shareholders as tax credits against such shareholders personal liabilities to Jersey income tax.

As an anti-avoidance measure, private individuals resident in Jersey owning more than 2% of certain zero-rated Jersey companies (other than collective investment funds) and certain financial services companies will be liable to tax on dividends deemed to be received from such companies where the actual dividends distributed by such companies amount to less than 60% of relevant profits.

Administration

Zero-rated companies will need to complete a Jersey income tax return form. For most companies the first Jersey tax return form will need to be filed in January 2010 (in respect of tax year 2009). Advice on the transitional provisions for those companies incorporated between 3 June and 31 December 2008 can be provided on request.

In completing this form, the company will confirm that it qualifies for the zero corporate income tax rating. It must also declare whether any Jersey residents have any beneficial interests in the company. No fees in respect of the new zero rating or the transition for existing companies are payable either on application or annually.

Jersey Income Tax - Shareholders

Shareholders in a Jersey company who are not Jersey tax resident are not subject to taxation in Jersey in respect of any income or gains arising in respect of such shares held by them.

Jersey tax resident individual shareholders will be liable to Jersey income tax at a rate of 20% (subject to the application of allowances and reliefs relevant to their own personal tax status).

Jersey Limited Partnerships

Jersey limited partnerships are tax transparent. The limited partnership is not itself chargeable in respect of Jersey income tax, income is treated as accruing directly to the partners.

Jersey resident partners, if any, are therefore chargeable to Jersey income tax on their apportioned share of the partnership income arising from the limited partnership.

Non-Jersey resident partners are not chargeable to Jersey income tax in respect of the following: non-Jersey source investment income or profits; interest on Jersey bank deposits; cash or stock dividends paid to the limited partnership by a Jersey resident, zero-rated company; or interest paid by any Jersey-resident company ("**exempt income**").

Jersey income tax will also not be assessable in respect of distributions by a Jersey limited partnership arising from these sources and paid to either: a Jersey resident, investment holding company whose shareholders are not Jersey tax resident; or to the trustee of a Jersey trust whose beneficiaries are entirely non-Jersey resident.

Non-Jersey resident partners are therefore only chargeable to Jersey income tax in respect of Jersey source income, comprising the income profits of a trade carried on in Jersey (other than the exempt income referred to above). Jersey source income also therefore excludes capital profits, interest paid on limited partners' loans to the limited partnership or income profits from investment or trading activities outside of Jersey.

Non-Jersey resident limited partners are therefore not chargeable to Jersey income tax on income derived from investments outside of Jersey and no withholding on account of Jersey tax will be made in respect of such income. Written confirmation can be obtained from the Jersey Tax Comptroller in individual cases.

Jersey Unit Trusts

By longstanding published concession, the trustees of Jersey unit trusts are not chargeable to Jersey income tax in respect of non-Jersey source income (and Jersey bank account interest) arising for the benefit of non-Jersey resident unitholders. This concession applies automatically where all unitholders are non-Jersey resident and no withholding on account of Jersey tax will occur.

Jersey resident unitholders will be chargeable to Jersey income tax in respect of relevant distributions made to them. Therefore where some unitholders are Jersey resident and some are non-Jersey resident, formal application for full exemption will be made to the Jersey Tax Comptroller, the trustee will undertake to the Comptroller to deduct and account for Jersey income tax in respect of distributions to Jersey residents and an anti-avoidance notice must be given to Jersey-resident potential investors.

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Goods and Services Tax

The States of Jersey introduced a Goods and Services Tax (“**GST**”) in 2008 which is generally chargeable on the value of goods and services supplied in Jersey at a rate of 3% of the value of the supply. Supplies of goods or services by or to Jersey companies, limited partnerships and unit trusts will be outside the scope of GST however if they constitute “international services entities” (“**ISE**”).

A Jersey company, limited partnership or unit trust will constitute an ISE if no individual, ordinarily resident in Jersey, receives or has the effective use or enjoyment of goods or services supplied by it, to it or of any asset owned or administered by it. Investment vehicles meeting these criteria are therefore considered to fall outside the Jersey supply chain and are therefore outside the scope of Jersey GST.

To obtain and continue to hold ISE status, such company, limited partnership or unit trust will register annually and pay an annual fee of £100.

European Union Savings Tax Directive - Interest Payments

Jersey is not subject to the European Union Directive on the Taxation of Savings Income (the “**EU Savings Tax Directive**”). However, in keeping with Jersey’s policy of positive international relations with the EU and in line with steps taken by other relevant third countries, the States of Jersey introduced a withholding tax / disclosure system in respect of certain payments of interest, or other similar income. This system and the EU Savings Tax Directive apply to such payments made to a private individual beneficial owner resident in an EU Member State by a paying agent established in Jersey (the terms “**beneficial owner**” and “**paying agent**” are defined in the EU Savings Tax Directive).

The retention tax system and associated disclosure arrangements are implemented in Jersey by means of bilateral agreements with each of the EU Member States, the Taxation (Agreements with European Union Member States) (Jersey) Regulations 2005 and Guidance Notes issued by the Policy & Resources Committee of the States of Jersey.

The effect of these provisions is that the relevant private individual beneficial owner may elect for information exchange in respect of such interest or similar payment between the Jersey tax authorities and the tax authorities of the EU Member State of his residence. Alternatively, a withholding tax from such payment would apply at a rate of 15% (increasing over time to a rate of 35%).

Based on these provisions and the current practice of the Jersey tax authorities, distributions in respect of shares, limited partnership interests or units and the proceeds of sale or redemption of such shares, limited partnership interests or units do not constitute interest payments for the purposes of the withholding tax system. Therefore no Jersey company, general partner or trustee is obliged to

levy withholding tax in Jersey under these provisions in respect of such payments. Two limited caveats (on which specific advice should be sought) may apply in certain circumstances, first to the very small category of collective investment funds equivalent to UCITs funds where such funds, with EU resident private individual investors, invest in debt instruments and secondly where a trust beneficiary has an absolute entitlement to interest payments.

International Co-operation

Jersey’s policy commitment to transparency in international taxation matters has also led to a growing number of Tax Information Exchange Agreements between Jersey and third countries. Such Tax Information Exchange Agreements provide for the exchange of information relating to civil and criminal tax matters between the contracting partners in relation to specific written requests which are generally required to set out:

- the identity of the person under investigation;
- the nature, tax purpose and period of the information requested;
- the reasons it is relevant to tax administration and enforcement;
- the grounds for believing the information is available;
- that the information would be obtained under the requesting party’s domestic law or administration; and
- that the requesting party has pursued all domestic means of obtaining the information.

Such Tax Information Exchange Agreements have generally been accompanied by express recognition by the other contracting parties of Jersey’s commitment to complying with international standards of financial regulation, anti-money laundering (“**AML**”) and combating terrorist financing (“**CFT**”).

This is in line with the assessment of the International Monetary Fund in September 2009 that Jersey is in the “top division” of global finance centres (including the EU and G20) with a “comprehensive and robust” AML/CFT framework and a high level of compliance with Financial Action Task Force Recommendations.

Jersey commenced its policy of entering into Tax Information Exchange Agreements (“**TIEAs**”) based on the internationally agreed model in 2002. To date Jersey has entered into TIEAs with Ireland, France, the United Kingdom, the United States of America, Germany, the Netherlands, Denmark, Norway, Sweden, Finland, Portugal, Iceland, Greenland, the Faroe Islands, Australia and Indonesia. Further TIEAs with other jurisdictions, such as New Zealand, Italy and Spain are currently in the course of negotiation.

Jersey entered into a Double Tax Agreement with Malta in 2010.

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Jersey was immediately placed on the OECDs' "white list" of jurisdictions having "substantially implemented the internationally agreed standard" on its publication in 2009, alongside jurisdictions such as the USA, the United Kingdom and a number of other EU Member states.

Jersey (along with India, Japan and Singapore) is the vice-chair of the OECD Peer Review Group, chaired by France, set up to assess the effectiveness of international standards of transparency and information exchange in taxation matters.

This briefing provides a general summary only of this area based on the current law and practice in Jersey at the date of writing and is subject to changes therein. It does not purport to be comprehensive and does not constitute legal or tax advice that may be relied on. Specific, professional advice should be sought on each occasion.

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