

# Inform\*

## Zero/Ten – The new tax regime

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The new zero/ten tax regime already applies to those companies which first had a permanent establishment in Jersey on or after 3 June 2008. For other Jersey companies zero/ten will take effect for accounting periods ending in 2009. Under the new provisions the general corporate tax rate is 0%, instead of 20%, but other, higher rates may apply, depending on the nature of the company's activities. A Jersey resident shareholder who has an interest in a Jersey company will be taxed personally on a variety of sources of income arising at company level. Now the rules have been substantially finalised how will you be affected?



### Corporate tax rates

The general corporate income tax rate under the new regime is 0%. However, a 10% rate applies to the whole company's profits if it falls within the definition of a 'financial services company'. This would include a company registered to carry on investment business, trust company business, banking or certain fund functionary activities. A utility company will remain taxable at the rate of 20%. In addition, income from property located in Jersey, including rentals and property development profits, will be taxed at 20%.

### Taxation of Jersey shareholders

The new 'look through' provisions will apply to any Jersey resident individual who holds an interest amounting to more than 2% of the ordinary share capital of a Jersey company. The definition of ownership is very widely drawn to include direct and indirect interests and also shares held through a trust. Determining the size of the interest in certain situations - for example, where shares are held in a discretionary trust, is expected to be complex and the Comptroller may need to be approached for a ruling.

Look through will operate either by deeming distributions to occur at certain points or by full attribution of profits to the individual in accordance with his proportion of the ordinary share capital. Profits arising in any Jersey company are potentially within the rules, so it will be necessary to track down to underlying companies where there is a non-Jersey intermediate company in place.

### Deemed distributions

The deemed distribution provisions will apply to two classes of company:

1. Jersey financial services companies – meaning, broadly, those companies which will be subject to tax at 10% under the zero/ten framework; and
2. Jersey trading companies – trading companies which will be subject to tax at 0% under zero/ten.

The Jersey resident shareholder in such companies will be deemed to have received a final dividend equal to the whole of the company's profits as computed for tax purposes, after deducting actual dividends already paid out of those profits. This deemed final dividend arises only in certain circumstances such as the winding up of the company, the death of the shareholder or the shareholder's ceasing to hold more than 2% of the ordinary share capital.

Where the company falls in 2. above, an interim dividend is also deemed to arise. This is triggered on the last day of the accounting period following that in which the profits arise (i.e. the shareholder is taxed in the 2011 year of assessment for company profits arising in the year ended 31 December 2010). The dividend will be determined as 60% of the company's profits less actual dividends paid, and the amount taxed in this way is then deducted from any final deemed dividend that arises at a later date. Financial services companies will not be affected by this interim deemed dividend rule.

The Jersey resident shareholder will also be taxable on any loan he, or a member of his family, receives from a company subject to the deemed dividend rules. The tax charge will be on the whole of the loan advanced with credit in subsequent years where loans have been repaid. There are detailed provisions for calculating the charge, as well as a number of exemptions.

### Full attribution

Two classes of company will be subject to full attribution:

1. non-trading companies – this category will include most group holding companies as well as all forms of investment company (but not collective investment funds) all of which are taxed at 0% under zero/ten; and
2. personal services companies – companies 25% of whose profits arise from supplying the services of a shareholder, or persons connected with a shareholder, to a customer who would otherwise be their employer.

The Jersey resident shareholder in such a company is taxed as if the whole of his share of the company's profits arises in his own hands. Profits arising in the company during the year ended 31 December 2010 will therefore be reflected in his 2010 tax return. Where dividends are received at a later date, full credit is given for the tax paid by the shareholder under this rule.

### Withholding taxes

Companies will not be required to withhold Jersey income tax on any interest payments made under the new regime. Recipients of dividends will obtain a credit for tax paid by the company at the applicable rate and also any tax already suffered under the new deemed dividend/full attribution rules.

### Losses

In calculating the tax liability of a 10% company, or a shareholder under the deemed distribution or full attribution provisions, it will not be possible to offset a loss in the company against prior year profits. As a result subsequent losses will not disturb the agreed interim deemed dividends for that year. Losses may, however, be carried forward and offset against subsequent profits.

### Group Relief

Statutory group relief has been introduced to permit relief between trading companies subject to tax at 0% as well as those taxed at 10%. The provisions only allow losses to be offset from one 0% company to another and from one 10% company to another. This will be an issue for mixed groups composed of companies falling into different tax rates. Previously concessional group relief was available between such entities provided that they were all trading.

### Administration

The burden of calculating the profits taxable under the look through provisions will fall primarily on the company, which will be required to make a detailed return to the Comptroller including details of shareholders, dividends, profits and shareholder loans. (No return is required where the company secretary can vouch that no Jersey resident individual has an interest in the company).

### Understanding the impact of the look through rules

In practice, company profits can arise from a wide variety of sources each of which is treated differently under the look through rules.

Calculating the liability, taking into account dividends paid and available tax credits, is potentially a complex exercise requiring careful planning. Jersey trading companies outside the financial services sector may wish to pay sufficient dividends to avoid the interim dividend provisions altogether; all companies will potentially need to compute the deemed dividend or attribution charges and submit this information to the Income Tax Office. There is also a potential mismatch between actual dividend policy (based on GAAP) and the look through charge which is computed on tax principles.

### Taxation of non-Jersey companies

The 2008 Budget on 21 October 2008 proposes new measures aimed at ensuring companies which own and occupy property in Jersey will continue to pay tax after the introduction of zero/ten. The law, if enacted, will affect those companies which are not held by Jersey residents and which will be subject to tax at 0%. Tax at 20% will be charged, based on the notional rental value of the company's property. The charge will be restricted by reference to the company's overall level of profits and certain expenses may be offset against it, for example, interest or expenditure on plant or machinery. If the property is rented at a commercial rate the charge will not arise. Wide-ranging measures have been included to deter companies from taking steps to avoid the tax.

The notional rental value will be based on an independent valuation, to be prepared by a certified valuer and provided to the Comptroller of Income Tax, a measure which may have significant cost implications for companies.

If you or your company is affected by any of these rules and you would like to discuss the potential impact, please do not hesitate to get in touch.

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