

## ZERO / TEN - THE NEW TAX REGIME

### HOW WILL IT AFFECT ME?

#### A QUESTION AND ANSWER SESSION

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**Q.** Remind me – basically, what is Zero/Ten all about?

**A.** Well, it is a new tax regime. However, in a nutshell, if you are a Jersey resident the end result will not be a lot different – just the means of collection will change in some cases.

**Q.** What exactly does Zero / Ten mean?

**A.** Well, firstly, Zero/Ten/Twenty would have been a better designation.

Working backwards, Jersey property companies will pay tax at 20%, financial services companies will pay tax at 10% and other companies will pay tax at 0%.

**Q.** When does this regime commence?

**A.** Except for relatively new companies, it takes effect for accounting periods ending in 2009.

**Q.** So, if I have got a Jersey property investment or development company it will still pay tax at 20% - so no change then?

**A.** Correct.

**Q.** What if it is not a property company?

**A.** Well, the first issue to resolve is whether it is basically a trading company or an investment company.

**Q.** Let us take an investment company first. What happens?

**A.** The company pays 0% tax but the whole of the net income is attributed to the shareholder. Most of these companies have December year ends already. The whole of the net income for the year ended 31 December 2009 would be declared on the shareholder's 2009 tax return.

**Q.** What if it is basically a trading company but has a bit of investment income as well?

**A.** The investment income is included in with the trading profit for tax purposes and Capital Allowances are calculated and deducted in the normal way.

**Q.** OK, let us assume that a director controlled company makes a net taxable profit in the year ended 30 June 2009 of £50,000, after taking into account a monthly salary to him of £2,000, on which ITIS has been paid. The owner has also taken out a “lump sum” of £20,000, on which no ITIS has been paid. What happens?

**A.** Well, no change in respect of the salary. The director declares this on his 2008 and 2009 tax returns according to the dates of payment.

As far as the distribution of £20,000 is concerned, the Company Secretary prepares a distribution warrant in this respect and the director declares this amount on his 2009 tax return as well. It is taxable income in his hands.

However, that is not the end of it. The Comptroller wants to get his hands on at least 60% of the profit in short order i.e.  $60\% \times £50,000 = £30,000$ . As only £20,000 has been distributed the company is **deemed** to have paid the balance of £10,000 at 30 June 2010. The Company Secretary is obliged to prepare a return of “deemed distributions” and the director must declare that deemed dividend of £10,000 on his 2010 tax return.

(NB: This deemed interim dividend scenario does not apply to 10% financial services companies).

**Q.** What about the other 40% then?

**A.** Well, the director effectively has a deferred tax liability which will crystallise in the form of a deemed final dividend on the earliest of certain trigger events principally.

1. Selling or transferring the shares
2. Leaving the Island
3. Death

**Q.** Could this 40% balance scenario be replicated over a number of years?

**A.** Yes – so this could lead to a potentially large deferred liability.

**Q.** As companies have always had to pay all their tax liability on an annual basis there may be some merit in declaring full dividends then to avoid this deferred liability.

**A.** A lot of directors may choose this route.

**Q.** What about a loss situation?

**A.** Clearly if there is a loss there can be no tax. The loss can be carried forward but no longer set back against a prior year.

- Q.** What if I have more than one company?
- A.** Losses can be offset from one 0% company to another 0% company and from one 10% company to another 10% company. This only applies where the ownership relationship is 51% or more.
- Q.** Can one get around these provisions in some way by borrowing money from my own company or lending it to a family member?
- A.** No – such loans are treated as distributions.
- Q.** It sounds like there is some extra administration.
- A.** Yes – the onus of calculating the profits taxable under these “look through” provisions still remains and the company will be required to make a detailed return to the Comptroller including details of shareholders, dividends, profits and loans. It will be important to ensure that the information is available on a timely basis to ensure that this is done.
- Q.** What if my company has a lot of undistributed profits from earlier years which have suffered tax?
- A.** These can be distributed effectively tax free. The distribution voucher would show that this was out of pre 0/10 profits and would indicate a tax credit.

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### **CAVEAT**

It is clearly impossible to deal with all the detail of a lengthy and complicated law in a summary document like this.

The above is intended as an aide-memoire and should not be regarded as a substitute for proper advice. If you wish to discuss the 0/10 regime as it affects your company please contact Duncan Stuart, Colin Taylor or Sean O’Flaherty in the first instance.