“Large Corporate Retailers”

Taxes Office Guidance Notes

1.0 Introduction

1.1 In Budget 2018 the States Assembly agreed to apply a higher rate of tax to the profits of “large corporate retailers” with effect from the year of assessment (“the YOA”) 2018.

1.2 The rules relating to “large corporate retailers” were contained in Article 7 of the Finance (2018 Budget) (Jersey) Law 2018 (“the Finance Law”) https://www.jerseylaw.je/laws/enacted/Pages/L-14-2018.aspx . The Finance Law inserted Part 17 1A Large Corporate Retailers into the Income Tax (Jersey) Law 1961 (“the Law”).

1.3 To be a “large corporate retailer” a company will have met certain tests. The tests are applied to the financial period(s) which end in the YOA. These tests are considered for each YOA. Accordingly a company may be a “large corporate retailer” in one year whilst not a “large corporate retailer” in another year.

1.4 Companies which are within the scope of the tax on “large corporate retailers” will first become chargeable to tax on their profits for the financial period(s) ending in 2018. Accordingly a company which has a financial period ending on (for example) 30 June 2018 will be chargeable to tax on the profits for the whole of that financial period for the YOA 2018.

1.5 However the amount of tax a “large corporate retailer” will ultimately pay will depend on the level of the company’s taxable profits. This is because the rate of tax applied to a “large corporate retailer” varies as the company’s taxable profits exceeds certain thresholds. The maximum rate of tax applied to the taxable profits of a “large corporate retailer” is 20%.

2.0 Basic definitions

2.1 Part 17 1A of the Law contains a number of definitions which are used to identify the sales of a company which form the basis of determining whether a company meets the definition of a “large corporate retailer”.

3.0 “Retail sales” (Article 123H(1))

3.1 “Retail sales” means goods for consumption or use and will include all assets, commodities, consumer durables, effects, items, materials, produce, products, stock supplies, merchandise and things for sale.

3.2 However goods which are sold to other businesses or trades for the purpose of onward sale or supply by those businesses (including goods which are incorporated into other goods for onward sale or supply) are <u>not</u> “retail sales”. This will generally occur where a wholesaler is supplying goods to other businesses or trades.

3.3 Also the provision of food or drink which is intended for consumption at the point of sale (such as food or drink supplied by restaurants, cafés and pubs) and food or drink prepared to order at the point of sale for immediate consumption off the premises (such as food or drink supplied by takeaway outlets) are not "retail sales".

3.4 Furthermore for the avoidance of doubt the provision of services are not within the definition of "retail sales".

3.5 Accordingly a company will need to analyse its sales between "retail sales" and non-retail sales.

4.0 "Jersey retail turnover" (Article 123H(1))

4.1 "Jersey retail turnover" is defined as the total amount of "retail sales" made to persons resident in Jersey or persons who are physically present in Jersey at the time of the sale.

4.2 Accordingly in order to identify "Jersey retail turnover" a company will need to further analyse "retail sales" between sales in Jersey and sales outside of the Island.

4.3 Once the company has determined "Jersey retail turnover" the company can consider whether it will meet the "gross amount retail turnover test" and the "percentage retail turnover test".

5.0 "Large corporate retailer" (Article 123I)

5.1 A company will be a "large corporate retailer" if it meets all of the following tests:

a) it is regarded as resident in Jersey or has a permanent establishment in Jersey; and

b) the "gross amount retail turnover test" is met; and

c) the "percentage retail turnover test" is met.

6.0 "Gross amount retail turnover test" (Article 123J)

6.1 A company, which has a financial period(s) for the YOA of 12 months, will meet the "gross amount retail turnover test" if the company's cumulative amount of "Jersey retail turnover" is £2m or more.

6.2 Where the financial period(s) of a company for the YOA is more or less than 12 months the £2m threshold is adjusted. In such cases the threshold is calculated using the following formula:-

(A/365) x £2million

Where: A is the number of days in the financial period(s).

Example 1

ABC Limited has a financial period from commencement of trade on 1 July 2018 and ends on 31 December 2018. The number of days in the financial period is therefore 184 days. The threshold is calculated as follows:-

(184/365) x £2m = £1,008,219

The threshold for ABC Limited for YOA 2018 is £1,008,219. If the "Jersey retail turnover" of ABC Limited for 2018 is £1,008,219 or greater, then ABC Limited will have met the "gross amount retail turnover test".

Example 2

DEF Limited has a financial period which commences on 1 November 2018 and ends on 31 December 2019. The number of days in the financial period is therefore 426 days. The threshold is calculated as follows:-

(426/365) x £2m = £2,334,246

The threshold for DEF Limited for YOA 2019 is £2,334,246. If the "Jersey retail turnover" of DEF Limited for 2019 is £2,334,246 or greater then DEF Limited will have met the "gross amount retail turnover test".

7.0 "Percentage retail turnover test" (Article 123K)

7.1 A company will meet the "percentage retail turnover test" if the cumulative amount of "Jersey retail turnover" is 60% or more of the company's turnover from trade carried on in Jersey.

7.2 For the avoidance of doubt, the turnover from trade carried on outside of Jersey is not included in the "percentage retail turnover test".

Example 3

ABC Limited is trading exclusively in Jersey. ABC Limited has "Jersey retail turnover" of £3m and turnover from the supply of services of £1m for the 12 month financial period ending on 31 December 2018. Accordingly the total amount derived by ABC Limited from trade carried on in Jersey is £4m.

The "Jersey retail turnover" of ABC Limited is 75% of the total amount derived from trade carried on in Jersey (i.e. £3m/£4m x 100 = 75%).

Accordingly ABC Limited will meet the "percentage retail turnover test".

Example 4

DEF Limited is trading exclusively in Jersey. DEF Limited has "Jersey retail turnover" of £2m and turnover from wholesale supplies (i.e. goods sold to trades or businesses for onward sale or supply) of £5m for the 12 month financial period ending on 31 December 2018. Accordingly the total amount derived by DEF Limited from trade carried on in Jersey is £7m.

The retail turnover of DEF Limited is 29% of the total amount derived from trade carried on in Jersey (i.e. £2m/£7m x 100 = 29%).

Accordingly DEF Limited will not meet the "percentage retail turnover test".

8.0 Computation of tax (Article 123L)

8.1 A company which meets the definition of a "large corporate retailer" will be required to provide a computation of profits chargeable to tax under Schedule D and the financial statements for the financial period(s) ending in the YOA.

8.2 For the avoidance of doubt a "large corporate retailer" is liable to tax not only on the profits from "retail sales" but on all the company's profits chargeable to tax under Schedule D.

8.3 The computation of profits should include the adjustments for the deduction of allowances and reliefs in the normal way. This would include for example the deduction for capital allowances, losses brought forward, group relief etc.

8.4 Where the profits chargeable to tax under schedule D are less than £500,000 the rate of tax charged is 0% ("the 0% threshold").

8.5 If the profits chargeable to tax under schedule D are greater than £750,000 the rate of tax charged is 20% ("the full rate threshold").

8.6 Where the profits chargeable to tax under schedule D are equal to or greater than £500,000 but not exceeding £750,000, the tax charged is calculated using the following steps ("the taper calculation"):-

a) Step 1
Calculate A x 20% (i.e. "B");
b) Step 2
Calculate (£750,000 – A) x 40% (i.e. "C");
c) Step 3
Calculate B-C.

In the above calculations –

"A" = The amount of profits chargeable to tax under Schedule D

"B" = The amount calculated in Step 1

"C" = The amount calculated in Step 2

Example 5

ABC Limited has profits chargeable to tax under Schedule D for the 12 month financial period ending 31 December 2018 of £600,000. The taper calculation is as follows:-

Step 1

£600,000 x 20% = £120,000 (i.e. "B")

Step 2

(£750,000 - £600,000) x 40% = £60,000 (i.e. "C")

Step 3

£120,000 - £60,000 = £60,000 (i.e. "B-C")

The tax liability of ABC Limited for the YOA 2018 is £60,000.

9.0 Computation of tax financial period(s) more or less than 12 months

9.1 Where the financial period(s) of a company which end in the YOA are more or less than 12 months the 0% threshold and the full rate threshold are calculated using the following formula:-

(A/365) x £500,000 or £750,000 as the case requires.

Where: "A" is the number of days in the relevant financial period(s).

Example 6

ABC Limited has a financial period from commencement of trade on 1 July 2018 and ends on 31 December 2018. The number of days in the financial period is 184 days. The calculation of the 0% threshold and the full rate threshold which apply to ABC Limited for 2018 are as follows:-

(184/365) x £500,000 = £252,054; and

(184/365) x £750,000 = £378,082

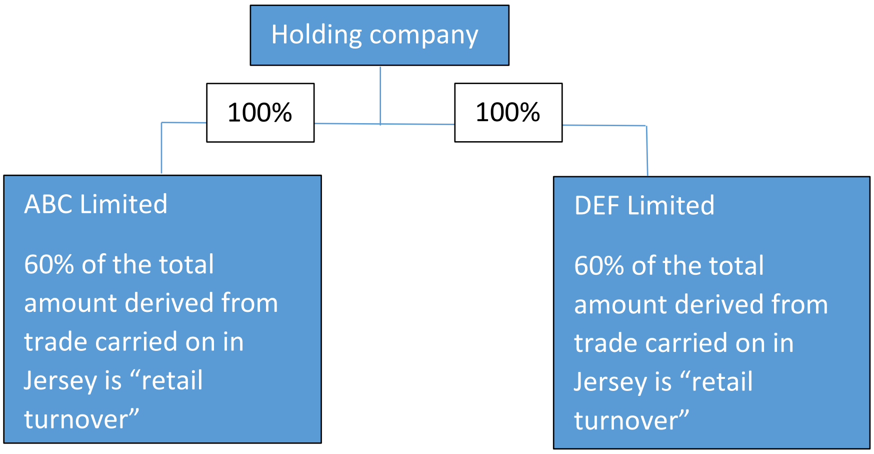
When computing the amount of tax for 2018 YOA, ABC Limited would substitute the 0% threshold for the amount of £252,054 in Article 123L(2) and Article 123L(4). And also substitute the full rate threshold for the amount of £378,082 in Article 123L(3) and Article 123L(4).

10.0 Associated companies

10.1 A group of associated companies is defined as two or more companies where: 1) each company has "retail turnover" of 60% or more of the total amount the company derives from trade carried on in Jersey; and 2) the companies are under control of the same person(s).

10.2 "Control" is defined in Article 123H(1) of the Law as having the power to secure that the affairs of the company are conducted in accordance with the wishes of the controlling person.

Example 7



ABC Limited and DEF Limited are associated companies.

11.0 Gross amount retail turnover test associated companies

11.1 Where there is a group of associated companies, and the financial period(s) of all the associated companies is 12 months, the "gross amount retail turnover test" will be met if the aggregate amount of the cumulative "Jersey retail turnover" of all the associated companies is £2m or greater.

11.2 If all the financial period(s) of the group of associated companies are the same length and the financial periods are more or less than 12 months, the threshold of £2m is adjusted using the following formula:-

(A/365) x £2m

Where: "A" is the number of days of the financial period(s). (See example 1 and example 2).

11.3 If the financial period(s) of the group of associated companies are not all the same length then "A" is the number of days of the shortest financial period(s) of an associated company in the group.

12.0 Computation of tax associated companies

12.1 When computing the amount of tax to be charged in respect of a group of associated companies the profits chargeable under Schedule D of all the companies in the group are aggregated before calculating the tax charged under Article 123L(2), (3) or (4).

12.2 In calculating the aggregate profits of the associated companies, any loss suffered by an associated company is deemed to be zero.

12.3 The tax charged is then apportioned between the associated companies on a pro rata basis.

Example 8

ABC Limited and DEF Limited are associated companies which meet the "gross amount turnover test". The financial period(s) of both companies is 12 months. ABC Limited has profits of £260,000 and DEF Limited has profits of £400,000.

The tax chargeable to the associated companies is calculated as follows:-

Profits of ABC Limited	£260,000
Profits of DEF Limited	£400,000
Aggregate Profits	£660,000
Step 1	
£660,000 @ 20% =	£132,000
Step 2	
(£750,000 - £660,000) x 40% =	£36,000
Step 3	
£132,000 - £36,000 =	£96,000
Apportionment of tax liability	
ABC Limited £96,000 x £260,000/£660,000 =	£37,818
DEF Limited £96,000 x £400,000/£660,000 =	£58,182

13.0 Financial period(s) more or less than 12 months

13.1 Where the financial period(s) of all the associated companies are the same but are more or less than 12 months, the 0% threshold and full rate threshold are calculated using the following formula:-

(A/365) x £500,000 or £750,000 as the case requires.

Where: "A" is the number of days of the financial period(s).

13.2 Where the financial period(s) of all the associated companies are not the same then "A" is the number of days of the associated company with the shortest financial period(s).

Example 9

ABC Limited and DEF Limited are associated companies which meet the "gross amount turnover test". The financial period of ABC Limited is 1 July 2020 to 31 December 2020 (i.e. 184 days) and the financial period for DEF Limited is 1 January 2020 to 31 December 2020 (i.e. 365 days). ABC Limited has profits of £200,000 and DEF Limited has profits of £500,000.

ABC Limited has the shortest financial period, accordingly the 0% threshold and the full rate threshold are calculated as follows:-

0% threshold

(184/365) x £500,000 = £252,054

Full rate threshold

(184/365) x £750,000 = £378,082

The tax chargeable to the associated companies is calculated as follows:-

Profits of ABC Limited	£200,000
Profits of DEF Limited	£500,000
Aggregate profits	£700,000

As the aggregate profits of £700,000 exceed the revised full rate threshold of £378,082 the profits are charge at the rate of 20%.

Aggregate profits £700,000 @ 20%	£140,000

Apportionment of tax liability

ABC Limited £140,000 x £200,000/£700,000 =	£40,000
DEF Limited £140,000 x £500,000/£700,000 =	£100,000

14.0 Losses (Article 107, 107A and 108) and Group relief (Article 123EA)

14.1 A company which is a "large corporate retailer" is not entitled to claim relief for losses under the provisions of either Article 107 or Article 107A.

14.2 However a "large corporate retailer" which has sustained a loss in its trade may claim that the loss is carried forward under the provisions of Article 108 and set the losses off against the profits arising from the same trade in the first subsequent assessment. The set off of the losses carried forward will apply irrespective of the fact that the losses were incurred at a time when the company was not a "large corporate retailer".

14.3 Furthermore losses sustained at a time when the company is a "large corporate retailer" and carry forward under the provisions of Article 108 will be set off against the profits of the same trade in the first subsequent assessment whether or not the company is a "large corporate retailer" in the first subsequent assessment.

14.4 A "large corporate retailer" which incurred losses prior to the YOA 2018 for set off under Article 108 will be required to provide the financial statements and tax computations for the years of assessment prior to 2018 in order to satisfy the Comptroller of the amount of the loss relief which is due.

14.5 For the purposes of group relief the definition of "qualifying company" has been modified to include "large corporate retailers". The modification to the group relief provisions require that both the surrendering company and the claimant company are "large corporate retailers" in order for a loss to be surrendered.

15.0 Capital allowances

15.1 "Large corporate retailers" are entitled to capital allowances in respect of machinery or plant which is used wholly and exclusively for the purposes of the trade.

15.2 In order to determine the qualifying expenditure for the purpose of the capital allowances calculation for the YOA 2018 a "large corporate retailer" will need to:

1) determine the excess of any qualifying expenditure following the allowance for the YOA 2017;

2) add any additional qualifying expenditure incurred in the basis period (i.e. the financial period(s) which form the basis on which the 2018 assessment is calculated) for the YOA 2018; and

3) deduct any disposal proceeds received in respect of any plant or machinery during the basis period.

15.3 Companies which have submitted tax computations annually up to the YOA 2017 should have no issues in determining the balance of any qualifying expenditure following the deduction in respect of the allowance for the YOA 2017.

15.4 In circumstances where annual tax computations have not been submitted, companies will need to produce a schedule to calculate the qualifying expenditure following the deduction in respect of the allowance for the YOA 2017. The schedule will need to include details of:

1) the annual expenditure on the provision of machinery or plant; and

2) the proceeds from the disposal of any machinery or plant,

for all the basis periods since the YOA in which a capital allowances computation was last prepared (if they were ever prepared).

In the calculation of the qualifying expenditure the annual allowances for all the intervening YOAs, since the YOA in which a capital allowances computation was last prepared (if they were ever prepared) should be deducted, including the allowance for the YOA 2017.

15.5 It is anticipated that companies should be able to identify such information from their fixed assets registers. However where capital allowance computations have not been prepared for a number of years the Comptroller recognises that preparing a detailed analysis of individual items of machinery or plant may be time consuming.

15.6 Accordingly as a pragmatic measure the Comptroller would not propose to request companies, when calculating the qualifying expenditure for the basis periods up to the YOA 2017, to provide a full analysis of individual items of machinery or plant where the cost of such items was less than £20,000.

15.7 Where a company has qualifying expenditure in respect of such machinery or plant (i.e. less than £20,000), the aggregate cost should be identified as such in the capital allowance computation.

16.0 Transitional arrangement (Schedule 5 Paragraph 21)

16.1 The Law includes a transitional arrangement for companies which become subject to tax as "large corporate retailers" in 2018.

16.2 Under these rules the Comptroller will grant transitional relief to qualifying companies in respect of their profits which are *prima facie* subject to tax but which arose on or before 31 December 2017.

16.3 A company which is a "large corporate retailer" as a result of the introduction of the rules in Budget 2018 will qualify for the transitional arrangement if:

1) the latest accounting date of the company for the purposes of assessing the company's liability for the YOA 2018 is 31 December 2018; or
2) an election is made such that 31 December 2018 is treated as if it is the latest accounting date in the YOA 2018; and
3) the financial period(s) taken into account for the purposes of calculating the company's liability to income tax for the YOA 2018 includes all or any part of a financial period from 1 January 2016 to 31 December 2017.

16.4 This might occur where for example:-

a) a company commenced trading in 2017 and ends its first financial period on 31 December 2018; or
b) a company has a financial period ending on (for example) 30 June 2018 and subsequently changes its accounting date by preparing financial statements for the period from 1 July 2018 to 31 December 2018; or
c) a company has a financial period ending on (for example) 30 April 2018, but does not wish to change its accounting date by preparing financial statements for the period from 1 May 2018 to 31 December 2018, and hence makes an election to be taxed as if 31 December 2018 is the latest financial period ending in the YOA 2018.

16.5 Where a company qualifies for the transitional arrangement, the Comptroller will grant relief in respect of the profits of the company arising on or before 31 December 2017 on a "fair, just and reasonable basis".

16.6 Furthermore the Comptroller will also need to consider the effect that the granting of the transitional relief will have in connection with the liability of any other person (e.g. the shareholder distribution rules) and make such adjustments as required on a "fair, just and reasonable basis".

Example 10

ABC Limited commences trading on 1 July 2017 and prepares financial statements for the 18 months to 31 December 2018.

ABC Limited qualifies for the transitional arrangement as the financial period taken into account in assessing the income of the company for 2018 include a period of 6 months during 2017 (i.e. 1 July 2017 to 31 December 2017) and the latest financial period is 31 December 2018.

Example 11

DEF Limited has a 12 month financial period ending on 30 June 2018. The company changes the accounting date by preparing financial statements for 6 months for the period 1 July 2018 to 31 December 2018.

DEF Limited qualifies for the transitional arrangement as the financial period ending on 31 June 2018 include a period of 6 months during 2017 (i.e. 1 July 2017 to 31 December 2017) and the latest financial period taken into account in calculating the tax for the YOA 2018 ends on 31 December 2018 (i.e. 1 July 2018 to 31 December 2018).

Example 12

GHI Limited has an accounting date of 30 April and does not wish to change so that it has a financial period ending on 31 December 2018. Alternatively GHI Limited makes an election under the transitional arrangement to be taxed as if 31 December 2018 is the latest financial period ending in the YOA 2018.

On making the election GHI Limited qualifies for the transitional arrangement as the financial period ending 30 April 2018 includes 8 months during 2017 (i.e. 1 May 2017 to 31 December 2017) and the latest financial period taken into account in calculating the income tax for the YOA 2018 is the deemed financial period ending on 31 December 2018 (i.e. 1 May 2018 to 31 December 2018).

17.0 Transitional relief election

17.1 A company wishing to be assessed as if 31 December 2018 is the latest accounting date ending in the YOA 2018 must give notice on or before 31 December 2019.

17.2 To give notice, a company should write to the Comptroller accordingly.

17.3 Once an election has been made the company will be treated for all purposes of the Law as if it had an accounting date ending on 31 December for the YOA 2018.

17.4 As a pragmatic approach to calculating the company's profits to 31 December, the Comptroller will normally accept a time apportionment of the profits for one or more of the company's financial periods. However if a time apportionment of the profits results in an unfair advantage/disadvantage then an appropriate methodology of apportioning the profits will need to be agreed with the Comptroller.

17.5 Furthermore for all future YOAs the company will be treated as is if it had an accounting date ending on 31 December.

17.6 A company may make a further election if, in a future YOA, the company wishes that the "deemed" accounting date (i.e. 31 December) should no longer apply. Such further election must be made on or before 31 December of the year following the YOA in which the "deemed" accounting date no longer applies.

17.7 When making the further election a company will need to notify the Comptroller of its accounting date for the YOA immediately following the last YOA in which the "deemed" accounting date applied.

17.8 For the YOA in respect of which a company has made the further election that the "deemed" accounting date should not apply, the Comptroller will charge to tax the profits of the company for a period of 12 months ending on the accounting date notified by the company.

18.0 Transitional relief

18.1 If a company is a "large corporate retailer" which meets the conditions to qualify for the transitional relief, the Comptroller will grant the relief on a fair, just and reasonable basis. Relief will be granted in respect of the tax charged on the proportion of the profits which arose on or before 31 December 2017.

18.2 The way in which the Comptroller will grant relief is best explained by an example:-

Example 13

ABC Limited is a "large corporate retailer" and has a financial period commencing on 1 July 2017 and ending on 31 December 2018. There are 549 days in the financial period.

The profits chargeable to tax for the financial period ending on 31 December 2018 total £1,200,000. The profits for the period 1 July 2017 to 31 December 2017 was £402,000 and the profits for the period 1 January 2018 to 31 December 2018 was £798,000.

The full rate threshold applied to ABC Limited is re-calculated based on the number of days of the financial statements as follows:-

£750,000 x 549/365 = £1,128,082.

The profits of ABC Limited of £1,200,000 is greater than the threshold £1,128,082 therefore the tax liability of ABC Limited is calculated as follows:-

£1,200,000 @ 20% = £240,000

The relief granted in respect of the profits for the period 1 July 2017 to 31 December 2017 will be calculated as follows:-

£402,000 @ 20% = £80,400

Accordingly the tax liability of ABC Limited for YOA 2018 will be:-

£240,000 less £80,400 = <u>£159,600</u>

19.0 Interaction with distribution rules (Article 123N)

19.1 The application of Case IX in respect of company distributions has been modified in order to include a “large corporate retailer” within the definition of “relevant company”.

19.2 Accordingly when making a distribution a “large corporate retailer” will need to determine whether the distribution is assessable under Case IX or Case III.

19.3 The definition of “specified profits” is also modified to include the balance of profits of a “large corporate retailer” which have been charged to tax at the rate of 0%.

19.4 Where the profits of a “large corporate retailer” are charged to tax at a rate higher than 0% then they are <u>not</u> treated as “specified profits” for the purposes of calculating a “relevant distribution” under Case IX.

19.5 However a distribution out of the profits of a “large corporate retailer” which are taxed at a rate higher than 0% will *prima facie* be assessable under Case III and an individual receiving the distribution will receive an appropriate credit in accordance with Article 88(5)(b) of the Law.

19.5 A “large corporate retailer” will need to maintain sufficient records in order to track the reserves which have been taxed and the effective rate of tax applied so that the appropriate tax credit can be applied when a dividend is paid to a shareholder.

<u>Example 14</u>

ABC Limited is a “large corporate retailer” which has been taxed at the rate of 20% on its profits. Mr Smith who is a shareholder in ABC Limited is paid a dividend. The dividend is assessable under Case III.

ABC Limited pays a <u>gross</u> dividend of £100 and deducts tax of £20 in accordance with Article 88(2). Therefore the net amount received by Mr Smith is £80. ABC Limited completes a dividend voucher detailing the gross dividend and the tax deducted.

When completing his tax return Mr Smith declares the gross dividend of £100 and that the dividend had tax deducted of £20.

Mr Smith will be assessed on the gross dividend of £100 and receive a credit of £20 against his personal tax liability.

<u>Example 15</u>

DEF Limited is a “large corporate retailer” which has been taxed at an effective rate of 13% (under “the taper calculation”) on its profits. Mr Jones who is a shareholder in DEF Limited is paid a dividend out of these profits. The dividend is assessable under Case III.

DEF Limited pays a <u>gross</u> dividend of £100 and deducts tax of £13 in accordance with Article 88(2) (as modified by Article 123O). Therefore the net amount received by Mr Jones is £87. DEF Limited completes a dividend voucher detailing the gross dividend and the tax deducted.

When completing his tax return Mr Jones declares the gross dividend of £100 and that the dividend had tax deducted of £13.

Mr Jones will be assessed on the gross dividend of £100 and receive a credit of £13 against his personal tax liability.