

STATES OF JERSEY



DRAFT FINANCE (2019 BUDGET) (JERSEY) LAW 201- (P.130/2018): AMENDMENT

**Lodged au Greffe on 20th November 2018
by the Minister for Treasury and Resources**

STATES GREFFE

1 PAGE 35, ARTICLE 48 –

- (a) after Article 48, insert –

“49 Article 121 (general rule as to income tax on married persons) amended

After Article 121(2) there are inserted –

“(3) Subject to paragraph (4), the Comptroller may disclose information to spouse B about spouse A’s income for year of assessment 2017 and subsequent years, including information relating to the calculation of the rate at which spouse A’s income (including deemed income under this Part) is chargeable to tax.

(4) Paragraph (3) does not apply to a year of assessment in respect of which –

- (a) there is in effect an election for separate assessment under Article 121A;
- (b) the Comptroller is notified by spouse A that paragraph (3) is not to apply; or
- (c) spouse A and spouse B are separated, or treated as if they were separated, under Article 122.

(5) A notification under paragraph (4)(b) applies until revoked by spouse A.

(6) A notification under paragraph (4)(b) and a revocation under paragraph (5) must be in such form and manner as the Comptroller specifies.”;

- (b) renumber the subsequent Article numbers accordingly.

2 PAGE 35, ARTICLE 49 (RENUMBERED AS ARTICLE 50) –

- (a) after the renumbered Article 50 insert –

“51 Article 122B (general rule as to income tax on civil partners)

After Article 122B(2) there are inserted –

“(3) Subject to paragraph (4), the Comptroller may disclose information to civil partner B about civil partner A’s income for year of assessment 2017 and subsequent years, including information relating to the calculation of the rate at which civil partner A’s income (including deemed income under this Part) is chargeable to tax.

- (4) Paragraph (3) does not apply to a year of assessment in respect of which –
 - (a) there is in effect an election for separate assessment under Article 122C;
 - (b) the Comptroller is notified by civil partner A that paragraph (3) is not to apply; or
 - (c) civil partner A and civil partner B are separated, or treated as if they were separated, under Article 122E.
 - (5) A notification under paragraph (4)(b) applies until revoked by civil partner A.
 - (6) A notification under paragraph (4)(b) and a revocation under paragraph (5) must be in such form and manner as the Comptroller specifies.”;
- (b) renumber the subsequent Article numbers accordingly.

3 PAGE 47, ARTICLE 67 (RENUMBERED ARTICLE 69) –

- (a) in paragraph (3)(b) for “Article 19 has” substitute “Articles 10, 12 and 19 have”;
- (b) in paragraph (5) for “Article 61” substitute “Article 63”.

MINISTER FOR TREASURY AND RESOURCES

REPORT

It is broadly acknowledged that the taxation of married couples/civil partnerships within the Island's personal income tax system is antiquated and no longer reflects the society within which Islanders live.

Under the current income tax system, just one of the spouses/partners is the "taxpayer" – it is as if the other spouse/partner does not exist for income tax purposes. The Income Tax Law deems that the "taxpayer" has personally earned all the income generated by the married couple/civil partnership; the "taxpayer" is solely responsible for completing and signing the tax return (and suffers the legal consequences if that tax return is wrong); they are also principally liable for any outstanding tax debts.

This treatment of married couples/civil partnerships can be justified no longer and must change – but the question is what should this treatment be replaced with? Should married couples/civil partnerships be taxed jointly? Should couples who have not entered into a legal relationship be taxed in a similar way? Should everyone simply be taxed on their own income?

These are fundamental questions which go "right to the heart" of how the income tax system works, and hence it is necessary to engage with the Public on these questions, seeking their views on how they would like to see the personal income tax system changed in the future. As a result, the States Treasury and Exchequer will shortly be engaging in a public consultation process regarding the future of the personal income tax system. Building on a programme of engagement that has already taken place, the consultation will ask the Public a series of questions regarding the future of the personal income tax system – including how married couples/civil partnerships should be taxed.

The public consultation process will close in early 2019, and the States Treasury and Exchequer will bring forward recommendations for change to the States Assembly as part of the proposed Government Plan for 2020–23.

Only through making a fundamental change is it possible to fully address the antiquated nature of the personal income tax system. Despite this, the Minister for Treasury and Resources agrees with those married women who argue that they should not need to seek the specific consent of their husbands to enter into discussions with the Taxes Office.

As such, in this Budget the Minister is bringing a legislative amendment to create a new principle of "presumed consent" in the context of married couples. This would establish the principle that a husband is *presumed* to have given consent for the Taxes Office to discuss his tax affairs with his wife unless he "opts out" of this presumed consent regime by notifying the Taxes Office on a specified form. Similar rules would apply to civil partnerships and same-sex married couples.

To operate this principle of presumed consent, amendments are required to the Draft Finance (2019 Budget) (Jersey) Law 201- ([P.130/2018](#)) (to amend Parts 16 and 16A of the [Income Tax \(Jersey\) Law 1961](#)).

This will ensure that an officer within the Taxes Office who discusses a husband's tax affairs with his wife is not breaching that officer's oath of confidentiality.

The Minister proposes that this presumed consent regime will take effect from 1st January 2019. It will cover tax returns (as well as the constituent elements of ITIS calculations) from the year of assessment 2017 onwards.

The presumption of consent would apply unless and until the husband submits a specified notification to the Taxes Office, requesting that the consent be withdrawn. It would also only apply to years of assessment (from 2017 onwards) when the husband and wife in question were married, and would fall away when a couple separate.

Where an election for separate assessments has been made under Article 121A (or equivalent provisions within the context of civil partnerships/same sex couples), presumed consent will not apply – i.e. a married woman will not have presumed consent to discuss her husband’s tax affairs if there has been an election for separate assessments.

Noting that the introduction of presumed consent *prima facie* impacts on the rights of the husband to confidentiality in relation to his tax affairs, the Minister understands that the introduction of presumed consent is both legally possible and GDPR compliant.

Financial and manpower implications

This amendment will have no impact on the States’ income. If adopted, it will result in the financial position being as was originally prescribed in the Draft 2019 Budget Statement.

From an administrative perspective, resources will need to be diverted in the short term to create the “opt out” and revocation elections, and to produce detailed guidance for Revenue officials regarding the scope of the presumed consent.