

STATES OF JERSEY



DRAFT TAXATION (INCOME TAX, GOODS AND SERVICES TAX AND REVENUE ADMINISTRATION) (AMENDMENT) (JERSEY) LAW 202- (P.51/2021): COMMENTS

**Presented to the States on 14th July 2021
by the Corporate Services Scrutiny Panel
Earliest date for debate: 20th July 2021**

STATES GREFFE

COMMENTS

Introduction

1. The Minister for Treasury and Resources (the Minister) formally informed the Corporate Services Scrutiny Panel (the Panel) of her intention to lodge a proposition for the [Draft Taxation \(Income Tax, Goods and Services Tax and Revenue Administration\) \(Amendment\) \(Jersey\) Law 202-](#) (the Proposition) through a [letter](#) which the Panel received 16th February 2021.
2. The Proposition ([P.51/2021](#)) lodged by the Minister on 18th May 2021, if approved, will make a number of changes to the Income Tax (Jersey) Law 1961, the Goods and Services Tax (Jersey) Law 2007 and the Revenue Administration (Jersey) Law 2019. These changes will introduce new powers to Revenue Jersey and make changes to some existing powers to ensure that they work as intended.
3. The Panel had previously carried out a review of the, then draft, [Revenue Administration \(Jersey\) Law 2019](#) and produced a report which was presented on 23rd October 2018 ([S.R.3/2019](#)). The Panel's report made recommendations that have helped shape elements of the Proposition with a number of measures being deferred from the [Finance \(2020 Budget\) \(Jersey\) Law](#) at the request of the Panel.
4. As this Proposition is considered to be a key issue for the public, and linked to Government strategic objectives, the Panel agreed to undertake a review. Due to the technical aspects of the Proposition the Panel engaged an expert adviser for its review (adviser report – Appendix 1).
5. The Panel also issued a call for evidence and carried out a public hearing with the Minister and relevant government officers.
6. This comments paper outlines the key findings of the Panel's review, which the Panel hopes will aid the Assembly in its debate of the Proposition and the Minister during the implementation of the changes should they be adopted.
7. The Panel has also lodged two Amendments to the Proposition. The first Amendment ([P.51/2021 Amd.](#)) if approved would require the Comptroller of Revenue (the Comptroller) to issue a warning of prosecution liability regarding third party information notices. The second Amendment ([P.51/2021 Amd.\(2\)](#)) if approved would enable electronic information notices to be issued and remove the need for a 'wet' signature on such notices. A report has been prepared to accompany each proposed Amendment.

Statutory Enquiry Window

8. Article 12 of the Proposition simplifies the express conditions governing when additional or amended assessments may be issued. The Panel has been advised that this is a more modern and flexible way of expressing the need for such a power as it does not require the Comptroller to identify the precise reason why tax has been under-charged, but merely to establish that this is the case.

9. Article 12 of the Proposition also limits the time period during which an amendment or additional assessment may be made to two years, measured from the later of:
 - a) The filing due date (as defined) for the return, or
 - b) The date the return was delivered.
10. The Panel concludes that for most taxpayers Article 12 introduces an important limit on the powers of the Comptroller, reducing the period available for making amendments or completing additional tax returns from five years to two years.
11. In the Panel's previous report (S.R.3/2019) recommendation 2 had highlighted that the Minister should prioritise the introduction of a statutory enquiry window. This followed evidence that the tax community had submitted to the Panel which confirmed that the five-year window was too long for taxpayers to wait to have certainty about their tax position.
12. The Panel notes that the Proposition includes safeguards where the amendment or additional assessment is necessary because of a careless action by the person, in which case the time limit is extended to five years, as well as where the amendment or additional assessment is required due to a deliberate action or inaction by the person, in which case there is no time limit.
13. The Panel notes that the distinction between careless and deliberate behaviour was introduced in 2019 in the Revenue Administration (Jersey) Law 2019 in relation to civil penalties for incorrect returns.
14. Recommendation 3 in the Report of the Panel on the Draft Law (P.122/2018) asked the Minister to prioritise publication of guidance on the concept of careless and deliberate behaviour. Although partly completed by Law the Panel would highlight that communication with taxpayers needs to be suitably updated to make the new implications of careless behaviour clear.
15. **The Panel would suggest that the Minister considers the communication of this guidance further to taxpayers in relation to the concept of careless and deliberate behaviour.**
16. Article 11 of the Proposition makes changes that will permit the Comptroller to make an assessment on a person in the absence of a return, with such an assessment being permitted to be amended or an additional assessment to be made without time limit, paralleling the power described above in cases of deliberate action or inaction. The Panel's adviser has indicated that this is consistent with similar powers in other jurisdictions. The Panel notes that this extension of the time limit (from five years to unlimited time) does not apply to years of assessment starting before 1 January 2022 by virtue of Article 20 of the Proposition.
17. Article 25 of the Revenue Administration (Jersey) Law 2019 specifies that records required to be kept under Article 24 must be retained for two years after the end of the year of assessment or calendar year they were created. Article 35 of the Proposition allows the period for which records are kept to be set at a

different time period through Regulations by introducing such an enabling power as Article 25(2). The Panel would highlight that it appears there is a mismatch between the requirement on individuals to keep records for two years and the ability of the Comptroller to raise assessments in the event of careless action by a taxpayer for up to five years.

18. **The Panel considers that it would be advisable for Revenue Jersey to explain and stipulate the requirement of retaining records for longer than the bare minimum in any public guidance on this subject.**

19. The Panel agrees that the simplification of the terms under which the powers are to be available are an appropriate modernisation and notes that the rights of appeal against additional or amended assessments are unchanged. **Although the Panel has recommended earlier clarity for taxpayers,** it agrees that a two-year time limit to amend or raise an additional assessment would seem to be a proportionate trade-off between certainty for taxpayers and enough time for Revenue Jersey to examine cases for compliance risk.

New criminal offence of failing to make a return

20. One of the stated aims of the Proposition is to rectify a flaw in the existing legislation providing for criminal sanctions in certain circumstances, following a review by Revenue Jersey into the powers that are needed to enforce compliance where the civil penalties available have proved inadequate.

21. The Proposition sets out what is regarded as the necessary three step process required for a successful prosecution:

- a) A clearly defined requirement to do something – for example to file a tax return
- b) An unambiguous statement that failure to meet this requirement constitutes an offence, and
- c) A remedy provided by law.

22. Revenue Jersey's review found that existing legislation is flawed, therefore Article 21B of the Proposition subsequently specifies it is an offence and a person is liable to a fine if they fail, without reasonable excuse, to comply with a notice to provide:

- a) Personal and corporate tax returns together with supporting information and documents required under Articles 16 and 16A;
- b) Returns made by a person acting for others who are unable to act for themselves due to incapacity or absence from or not being resident in Jersey under Article 17;
- c) Returns being lists of persons and income, profits or gains received by them required by notice under Article 18;
- d) Lists of lodgers and inmates residing in Jersey for 6 months as required by notice given under Article 19;
- e) Returns of employees and their earnings provided by employers as required by Article 20;
- f) Returns of subcontractors and payments made to them provided by building contractors under Article 20A;

- g) Returns of shareholders, share ownership, distributions and loans made companies which are either resident in Jersey or have a permanent establishment here under Article 20B;
 - h) Returns of employees and benefits in kind provided to them required under Article 20C, and
 - i) Returns of profits or gains made by foundations registered under the Foundations (Jersey) Law 2009 required under Article 20D.
23. The Panel is aware that the use of this measure and when it is implemented against a defaulting taxpayer are crucial to both Revenue Jersey and taxpayers. For Revenue Jersey it is important to have sufficient powers to adequately sanction those who deliberately fail to make returns as required. For the taxpayer, the balance needs to recognise that some of those with obligations under the law may struggle to meet those obligations for understandable reasons. The Panel's adviser highlighted that for some, the imposition of modest civil penalties will not be sufficient to prompt them to regularise their position, and although the Comptroller has power to raise an assessment in the absence of a return, there may be insufficient information to make an adequate assessment of the tax due.
24. The Panel raised the need for a right balance of compliance measures and reasonable operation of the Comptroller's powers in its Public Hearing of 25 June 2021, being informed by the Comptroller:

“it is probably worth stressing, while we make the inquiries and conduct the investigations, the decision whether to prosecute is always the Attorney General's. We would simply pass a case to the Attorney General to consider. If the Attorney General said: “No, I do not want to deal with this criminally” then it would just be dealt with as a civil matter... What we tend to always do is have early discussions with our own lawyers who advise us in the Law Officers' Department on a day-to-day basis about whether or not something may or may not be worth pursuing. Clearly if something is subject to a criminal sanction, certainly if you are getting to the point of talking about potential imprisonment, then the burdens of proof are clearly higher. It is usually beyond all reasonable doubt, whereas for civil penalties it is on the balance of probabilities. That is why we have all been very keen to create civil approaches and that is, for example, why the civil information power is here, because up until now we have only been able to rely on section 16A of the law, which is attached to a criminal tariff. It is a financial tariff rather than a prison term, but nonetheless it is a criminal matter and therefore it is potentially going into the Royal Court. Moving to civil approaches is by far the best thing to do for us and for taxpayers. It is certainly our policy in Revenue Jersey, as it is I think in most tax administrations generally to deal with matters civilly, which is why I was very keen that we started to make this move. The vast majority of taxpayers prefer to be dealt with civilly. If they are going to be fined they would rather be fined, pay it and keep out of the glare of the Royal Court.”¹

¹ [Transcript - Taxation Amendment Law Review - Minister for Treasury and Resources - 25 June 2021, Page 6](#)

25. The Proposition also introduces the power to include other persons in a prosecution if this is appropriate, for example if individuals are connected with an organisation who might also be guilty of an offence. These include:
- a) A limited liability partnership,
 - b) A separate limited partnership, or
 - c) A body corporate
26. The Panel held initial concern that Article 21C provides for an ‘additional’ conviction, rather than moving the conviction from the corporate body or partnership to the officer concerned. However, the Panel has chosen not to amend the proposition in this regard as it is understood that the fairness of conviction and penalties-imposed lies in the powers of the Attorney General.
- 27. The Panel’s adviser has highlighted, and the Panel agrees, that the Proposition does not make mention of Shadow Directors and has identified that inclusion of this in future legislation would be an important enhancement.**
28. Overall, the Panel identifies that the structure of the new measures providing criminal sanction for failure to make certain types of return matches the stated requirements for effective criminal powers and is a proportionate response to wilful failure to make a return. The power to impose criminal penalties on officers of bodies corporate or partnerships being an important extension, if administered fairly.

Civil information powers

29. The Proposition, if adopted, will introduce new powers for the Comptroller to require production of certain information from either taxpayers or third parties. The Proposition requires an information notice to be served by the Comptroller or Authorised Officer to specify the information required, as well as when and where it is to be provided, under two circumstances:
- a) Where the person has been given a reasonable opportunity to deliver the information required but has failed to do so, or
 - b) Where the Comptroller reasonably suspects that if such a request were made, the person would seek to conceal or destroy the information.
30. Article 27C of the Proposition will permit the Comptroller to serve an information notice on a third party, that is, someone other than the taxpayer. This will enable the Comptroller to gain information from a third party as to the tax position of a person or class of persons, can require information about a specific named taxpayer or a class of taxpayers.
31. Where a third-party notice has been issued which specifically identifies a taxpayer, the Comptroller must, in most cases, serve a copy of that notice on the taxpayer concerned. Where the Comptroller believes that doing so would prejudice the collection or recovery of tax or the investigation or prosecution of tax matters this is not necessary.

32. The Proposition specifies that it is a criminal offence to disclose without reasonable excuse, the fact that a third party notice has been served, or the contents or any information relating to such a notice. Given that Article 27C(6) of the Proposition specifies an automatic criminal offence (assuming no plea of reasonable excuse is available) for disclosure.
33. **The Panel regards it as unsatisfactory that the warning of this ‘may’ be specified by the notice when a person is exposed to criminal sanction, the Panel concludes that all taxpayers must be made aware of this, and although the Comptroller stated in the Public Hearing that this criminal sanction would not apply very often, the fact that it is available and the third party may be unaware of it is not sufficient. The Panel has therefore lodged an amendment to ensure this warning is included in such information notices.**
34. The Proposition will enable a fixed penalty amount of £300 which is supplemented by daily penalties of up to £60 per day for continued default or delay, which can only be levied once the initial penalty has been notified. The penalties are not mandatory as the provision allows the Comptroller to serve a notice of penalty on a person, and the daily penalty may be of an amount of up to £60 per day. This provides the opportunity for daily penalties to be levied at a low initial rate and increased during a continued period of default.
35. Individuals will have a right to appeal an information notice and penalty, a recommendation made by the Panel through S.R.3/2019. This was an important point as a good deal of concern was expressed, particularly by firms of accountants and tax advisers, about the proposed powers and the lack of taxpayer safeguards in the proposals.² This will require the appellant to give notice in writing to the Comptroller no later than 30 days after the date of service of the information notice.
36. The Panel’s adviser has highlighted that should the Proposition be adopted, taxpayers would have a full right of appeal against information notices, and in relation to notices served on them in relation to their own tax affairs are likely to be able to appeal on the grounds that they do not believe that the information is ‘reasonably required’ by the Comptroller. An individual will have the right to appeal a penalty if they have taken all reasonable steps to comply with the information notice or the amount of the penalty is unreasonable. However, there is no right of appeal against a penalty if the information sought is information which is required to be kept under any Revenue Law.
37. Once the Comptroller has obtained information using these powers the proposed legislation will permit retention of documents to be retained for a period of time to allow for full and complete inspection. The Panel assumes that the right of appeal would extend to circumstances where the Comptroller unreasonably retains documents which are needed by the appellant.
38. The Panel’s adviser has indicated that information notice measures included in the Proposition provide a formidable battery of powers to enable Revenue Jersey to undertake compliance work in respect of tax liabilities owed by Jersey

² ([S.R. 3/2019](#)) Paragraph 52

taxpayers, and that, while these powers do go beyond what is presently available to the Comptroller in terms of ease of use and practical application, they are not excessive in the light of powers available in other jurisdictions.

39. **The Panel has lodged an additional amendment regarding information notices. Currently the Proposition will require the Comptroller or Authorised Officer to sign the notices. Upon enquiry it was confirmed that this wording may not permit the allowance of electronic signature. It is the view of the Panel that requirement of a “wet” signature places a practical expiry date on the future of this legislation in an environment when digital developments are not only an essential tool in tax administration, but are developing rapidly in scope and deployment by tax authorities around the world. The Panel has been informed that oversight of authorisation of information notices will still be ensured as the Comptroller or Authorised Officer is still required to serve the notice.**

New criminal offence of concealing information

40. The Proposition will introduce a new offence relating to the compliance of information notices. Article 27H sets out the generality of the criminal offence and sanction that if a person who knowingly and without reasonable excuse alters, conceals, destroys or otherwise disposes of information requested by the Comptroller they are guilty of an offence punishable by a term of imprisonment for two years and a fine.
41. Where the information request was not made by serving an information notice, there is no offence committed if the information is destroyed after 12 months from the date of the request, or after any withdrawal of the request. Where the information requested was by service of an information notice, there is no offence committed if the Comptroller has given permission, or in the absence of such permission with the leave of the Royal Court. As this is a criminal sanction, there is no separate right of appeal, the case being dealt with through the normal criminal judicial process. The Panel agrees that this is a sensible measure.

Other changes to criminal sanctions

42. Other flaws in criminal sanctions have also been addressed through the Proposition, primarily by specifying that an offence is committed, and therefore persons are liable to a fine, in relevant areas of the Income Tax (Jersey) Law 1961 such as fraudulent use of exemption certificates in the construction sector, issue of and content of dividend warrants or refusal to allow deduction of tax.
43. Article 8 of the Proposition extends this criminal offence to the provision of a fraudulent return which has a bearing on “any person’s” liability to income tax, rather than the person providing the information (whether directly or not). This provides a much wider class of criminal sanction which can be imposed on any person providing fraudulent returns or claims to Revenue Jersey, whether or not it affects their own tax liability.

44. The extension of the existing criminal sanction for the provision of a fraudulent return to any person unrelated to the taxpayer affected is a significant widening of Revenue Jersey's powers. However, the Panel's adviser has highlighted that the imposition of a criminal penalty is not unreasonable in these circumstances. The Panel notes that a prison term of 15 years imposed by this (existing) provision could be regarded as excessive, however, acknowledges it as reasonable to rely on the judgement of the Attorney General and the operation of the Royal Court to be sure that justice is properly served in these cases. The Panel agrees that these are sensible measures.

Striking out appeals with no merit

45. The Comptroller, in the Public hearing of the 25 June 2021 highlighted the need for the ability to deny some appeals:

*"It is also the case that a number of taxpayers who for whatever reason want to play along or prevaricate can make quite spurious appeals to the commissioners. To be honest, there are not many of them but they do occur and in discussion with commissioners we did agree to try to stem that. This measure is an attempt to do so but, as you rightly say, if I have the power to refuse an appeal that decision itself is appealable. It is a bit like snakes and ladders. It may well be the case that I can dissuade a taxpayer from making an appeal that has no grounds in law, and they may well accept that, but equally if they are hellbent on going to the commissioners they can do so"*³

46. Articles 13 to 15 of the Proposition therefore introduce a new power to the Comptroller to refuse an appeal if in their opinion there are no admissible grounds for the appeal. There will be a requirement for the Comptroller to notify the appellant and the Commissioners in writing of the reasons for the refusal; this must be done within 40 days of receipt of the notice of appeal, with the appellant then having the right to appeal the refusal by giving notice to the Comptroller within 40 days of receiving the notice of the reasons for the refusal.

47. Article 15 of the Proposition sets out the procedure for the appeal against the refusal by the Comptroller, by inserting new Article 28A into the Income Tax (Jersey) Law 1961. This provides that the Commissioners must determine such an appeal by considering the notices and other documents provided to them and may then:

- a) Refuse the appeal against the refusal,
- b) Allow the appeal, or
- c) Give notice of a date for a hearing of the appeal.

48. In each of these cases the Commissioners must give written notice of the determination and where the appeal is refused, must specify the grounds for refusal.

49. The new power is deliberately set down to ensure that the appellant is not granted a hearing automatically into the refusal of the appeal, as that would be

³ [Transcript - Taxation Amendment Law Review - Minister for Treasury and Resources - 25 June 2021, Page 11](#)

self-defeating. The Comptroller confirmed in evidence to the Panel that the Commissioners would normally seek to ensure that they had heard from both parties before reaching a determination,⁴ and this should therefore be regarded as a reasonable safeguard for the taxpayer against what might otherwise be an unfair exercise of the Comptroller's powers.

Publication of Commissioners of Appeal determinations

50. Adoption of the Proposition will permit the Commissioners of Appeal to publish details of cases they have determined, including decisions historic to this Proposition.
51. There will be a requirement that the publication of determinations must not include personal information relating to and identifying a particular person either directly or by deduction. This will permit redacted determinations to be published in relation to historic determinations where this is considered appropriate.
52. The Panel held some concern on how cases for publication would be selected to ensure that cases were not chosen to give a particular view of any measure or provision which might distort the correct understanding of a matter which had been heard by the Commissioners. However, the Comptroller has indicated that the cases would be selected by the Commissioners and would not be influenced by Revenue Jersey,⁵ as such the Panel is satisfied that these concerns are suppressed.

Civil Penalties amendments

53. The Proposition makes a number of slight but important changes regarding civil penalties.
54. This includes updating the Income Tax (Jersey) Law 1961 to specify that a penalty for late returns made on behalf of another person who is either incapacitated or not resident in or not present in Jersey matches penalties for late returns made by the person themselves; the right of appeal remains.
55. The Proposition also clarifies that no penalty is imposed in respect of a penalty tax to be levied by way of a civil penalty for conduct involving dishonesty in regard to Goods and Services Tax, preventing both a civil and a criminal penalty applying to the same offence.
56. The Panel agrees that the changes are entirely sensible and make no material change to the operation of Tax Laws in Jersey.

Goods and Services Tax amendments

⁴ [Transcript - Taxation Amendment Law Review - Minister for Treasury and Resources - 25 June 2021, Page 11](#)

⁵ [Transcript - Taxation Amendment Law Review - Minister for Treasury and Resources - 25 June 2021, Page 16](#)

57. Adoption of the Proposition will bring the provision in Regulation 4 of the Goods and Services Tax (Jersey) Regulations 2007 into primary legislation, this provides that Goods and Services Tax does not apply to certain supplies made by the States other than in the course or furtherance of a business.
58. The Proposition will also make slight changes to the wording of Regulation 18 of the Goods and Services Tax (Jersey) Regulations 2007 to make the retention period for documents giving evidence of supplies made and received clearer. The retention period is unchanged at six years but would be expressly stated.
59. Article 24 of the Proposition modifies the requirement on the Comptroller to register a person for Goods and Services Tax under Schedule 1 of the Goods and Services Tax (Jersey) Law 2007. The existing provision requires a person to notify the Comptroller that they are liable to be registered when the relevant criteria are met, which would then require the Comptroller to register them. The flaw in this legislation is that if a person fails to notify the Comptroller no action is possible by the Comptroller to register them and collect the tax due, although paragraph 3(5) of the Schedule specifies that the person is guilty of an offence for failure to notify. The Proposition will require the Comptroller to register a person when they are satisfied that the person is liable to be registered, whether or not the person has notified their liability to be registered.
60. The Panel considered amending the Proposition to allow some discretion by the Comptroller in the registration for Goods and Service Tax, particularly in relation to a business which exceeded the registration limit temporarily or without realising it and this was subsequently discovered by the Comptroller at a point when the business had ceased to be required to be registered. However, there is a suitable route to enable the Comptroller to help businesses inadvertently in this position for which registration for a historic period would be a hardship. Once a person no longer meets the requirement to be registered they can apply to deregister, and here the Comptroller has some discretion in the application of the power to cancel the registration, which can be backdated if the Comptroller considers that is an appropriate step to take.

Provision to charge interest and penalty interest on late paid tax and to pay interest on overpaid tax

61. Article 17 of the Revenue Administration Law (Jersey) 2019 provides for interest to be charged in late payment of tax. This provision has not yet commenced, pending setting appropriate interest rates. Article 32 of the Proposition seeks to amend the provision by extending the interest charge to 'remittances' of tax in addition to payments of tax. Remittances are defined by Article 31 of the Proposition, inserting the definition into existing article 16 – the interpretive provisions.
62. The effect of the changes to Article 17 of the Revenue Administration Law (Jersey) 2019 is to include payments by employers and building contractors within the definition of amounts on which interest can be charged for late payment (or remittance). A further proposed change prevents interest from arising on late payments by taxpayers who are not required to pay instalments

for the relevant year of assessment, the Proposition will also ensure prevention of interest arising on charges once a payment is three months late.

63. Article 19 of the Revenue Administration (Jersey) Law 2019 provides for interest to be paid on refunds of overpaid tax and is also not yet in force. Article 34 of the Proposition amends the wording of Article 19 slightly to cover the repayments of overpaid remittances and further provides that interest is not due on repayments to persons not liable to pay instalments for the relevant tax year, mirroring the provisions above regarding interest charges.
64. The Proposition will also introduce a right of appeal against a penalty interest charge by giving notice of appeal to the Comptroller within 40 days of becoming aware of the decision by the Comptroller to impose penalty interest. The Panel finds this is a welcome development.

Further points

65. Article 20 of the Proposition inserts a power into Schedule 5 to the Income Tax (Jersey) Law 1961 to permit the States Assembly to review (and amend if appropriate) the provisions for collection of the 2019 liability from Prior Year Basis taxpayers, in accordance with Recommendation 8 in the Panel's report on its review of the Income Tax (Payment of 2019 Liability) Regulations 2021.⁶ The Panel is pleased to note this inclusion.

Panel Conclusion

66. The Panel concludes that the Draft Taxation (Income Tax, Goods And Services Tax And Revenue Administration) (Amendment) (Jersey) Law 202- largely proposes sensible changes to a number of the Island's Tax Laws, and goes some way in aiding the Minister's progress in modernising tax legislation. However, two amendments are needed to allow fair implementation of information notices and to aid in its future, potentially digital, practise.
67. The Panel is also of the opinion that the Minister must:
- a) Clarify the discrepancy between the legal requirement for individuals to keep records for two years and the ability of the Comptroller to raise assessments in the event of careless action by a taxpayer for up to five years, and ensure guidance is provided on this;
 - b) Update guidance on the distinction between careless and deliberate behaviour in relation to civil penalties for incorrect returns, to make the new implications of careless behaviour clear to taxpayers; and,
 - c) Make inclusion for "Shadow Directors" in future legislation.

⁶ [S.R.8/2021](#)

Appendix 1

Report to The Corporate Services Scrutiny Panel

Draft Taxation (Income Tax, Goods And Services
Tax And Revenue Administration) (Amendment)
(Jersey) Law 202- (P.51/2021)

The Tax, Public Finance and Tax Administration
aspects of the Draft Legislation

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1 The Draft legislation

- 1.1 The Draft Taxation (Income Tax, Goods And Services Tax And Revenue Administration) (Amendment) (Jersey) Law 202- (P.51/2021) (the Draft Law) was lodged by the Minister for Treasury and Resources on 18 May 2021. It makes a number of changes to the Income Tax (Jersey) Law 1961, the Goods and Services Tax (Jersey) Law 2007 and the Revenue Administration (Jersey) Law 2019.
- 1.2 The changes introduce new powers for Revenue Jersey and make changes to some existing powers to ensure that they work as intended. The changes follow from the previous Draft Revenue Amendment Law (P.122/2018) and include some measures deferred at the time that legislation was considered by the States Assembly. This now forms the Revenue Administration (Jersey) Law 2019 (L.13/2019). Corporate Service Scrutiny Panel reported on those proposals, and this report draws on the comments and recommendations made in the Panel's report¹.
- 1.3 In particular, this report will consider to what extent the Panel's previous recommendations have been included or followed in the new draft law.

Background

- 1.4 The Minister for Treasury and Resources is part way through sponsoring a programme of revising and updating tax law in Jersey. Views expressed to the Panel and included in their last report indicate that it is a widely held view that this modernisation is long overdue². Concerns have previously been expressed that the reforms are being implemented in a piecemeal way³ and that reform is too slow.
- 1.5 In my experience, such wholesale modernisation of the tax system and in particular the law governing tax administration is a task of significant proportions. It is clear that resources devoted to modernisation of the tax system are limited⁴ and this means that long overdue reform has become a protracted process. Further, it is clear that even the changes already made are having to be revisited, as evidenced by a number of proposed amendments to the Revenue Administration Law 2019 which is barely two years old and some of which has yet to be brought into force.
- 1.6 This report to the Panel will include a detailed consideration of all of the changes proposed and comment on each, with reference in particular to the previous report and Recommendations made in 2019.⁵

¹ Report of CSSP on the Draft Revenue Administration (Jersey) Law 201- [S.R.3/2019](#)

² [S.R. 3/2019](#) paragraphs 18 – 21 on Page 7 and Finding 1

³ [S.R. 3/2019](#) paragraphs 26 and 27 and Finding 4

⁴ [S.R. 3/2019](#) paragraph 30, quoting the Comptroller of Taxes

⁵ CSSP report [S.R. 3/2019](#)

2 Introduction of a statutory enquiry window

- 2.1 Part 4 of Income Tax (Jersey) Law 1961 requires any person who is served notice by the Comptroller to deliver a tax return by the due date. Part 5 of that Law requires the Comptroller to raise an assessment of the income charged to tax. In particular, existing Article 24 allows the Comptroller to raise additional assessments (or to amend assessments already raised) where appropriate up to five years after the end of the relevant tax year, except in cases of fraud or wilful default, where there is no time limit on additional or amended assessments.
- 2.2 The tax community has regarded this five year window as too long for taxpayers to wait to have certainty about their tax position, and the Panel's previous Report included a recommendation⁶ that promised work to bring forward an amendment to introduce a shorter time during which additional or amended assessments may be raised should be regarded as a matter of priority.
- 2.3 Article 12 of the Draft Law replaces existing Article 24 with a new article 24. This simplifies the express conditions governing when additional or amended assessments may be issued, and rather than specifying the exact conditions under which the Comptroller may use the power (as the existing Article 24 does) it merely allows the Comptroller the use the power "to ensure that the correct amount of tax is charged on a person." This is a more modern and flexible way of expressing the need for such a power as it does not require the Comptroller to identify the precise reason why tax has been under-charged, but merely to establish that this is the case.
- 2.4 New Article 24(2) then limits the time period during which an amendment or additional assessment may be made to two years, measured from the later of
- The filing due date (as defined) for the return, or
 - The date the return was delivered.

This, therefore, for most taxpayers introduces an important limit on the powers of the Comptroller, reducing the period available for making amended or additional returns from five years to two years.

- 2.5 However, this limit does not apply in two specific cases:
- Where the amendment or additional assessment is necessary because of a careless action by the person, in which case the time limit is extended to five years, and
 - Where the amendment or additional assessment is required due to a deliberate action or inaction by the person, in which case there is no time limit.

⁶ [S.R. 3/2019](#) Recommendation 2 paragraph 36.

- 2.6 In distinguishing between careless and deliberate action by a person, this amendment follows an established pattern in other jurisdictions. The five year limit remains in the case of careless behaviour, and the unlimited time allowed for making or amending assessments where there is fraud is an existing power in old Article 24.
- 2.7 The distinction between careless and deliberate behaviour was introduced in 2019 in the Revenue Administration (Jersey) Law 2019 in relation to civil penalties for incorrect returns. Recommendation 3 in the Report of the Panel on the Draft Law (P.122/2018) asked the Minister to prioritise publication of guidance on the concept of 'careless', and this guidance is now available. However, given the new application of the principle of careless to the time limit for amending or raising additional assessments, the existing guidance will need to be updated to make the new implications of careless behaviour clear to taxpayers.

Key finding 1: The use of the established principle that there is a differential between careless and deliberate actions is a sensible development, as taxpayers will gradually get used to and understand the way in which tax law distinguishes between these behaviours.

Recommendation 1: That the existing public guidance on carelessness be updated and publicised to explain how careless behaviour will affect taxpayers as a result of this change.

- 2.7 Article 11 of the Draft Law also makes changes to existing Article 23 of the Income Tax (Jersey) Law 1961 which permits the Comptroller to make an assessment on a person in the absence of a return. The amendment allows such an assessment to be amended or an additional assessment to be made without time limit, paralleling the power described above in cases of deliberate action or inaction. This is consistent with similar powers in other jurisdictions. It should be noted that this extension of the time limit (from five years to unlimited time) does not apply to years of assessment starting before 1 January 2022 by virtue of Article 20 of the Draft Law.
- 2.8 The proposed amendment to impose a two year time limit under normal circumstances meets Recommendation 2 in the Panel's previous report and provides the asked for earlier certainty for taxpayers. Although in the UK the enquiry window is set at one year, the Comptroller has previously expressed the view⁷ that this would be too short a time frame in Jersey, and given the pressure of work in Revenue Jersey, two years would seem to be an appropriate trade off between certainty for taxpayers and enough time for Revenue Jersey to examine cases for compliance risk.

⁷ [S.R. 3/2019](#) paragraph 35 on page 10

- 2.8 There are no added administrative burdens introduced by this measure, and the simplification of the terms under which the powers are to be available in new Article 24(1) are a sensible modernisation. The rights of appeal against additional or amended assessments are unchanged.

***Key finding 2:** This measure is a direct implementation of Recommendation 2 in the Panel's previous report and represents a significant improvement in taxpayer protections, subject to Key Finding 1 and Recommendation 1 above.*

3 Criminal Sanctions

New criminal offence of failing to make a return

- 3.1 One of the stated aims of the Draft Law is to rectify a flaw in the existing legislation providing for criminal sanctions in certain circumstances. This is to be achieved by repealing Article 136 of the Income Tax (Jersey) Law 1961 (through Article 7 of the Draft Law) and to introduce new Articles 21B and 21C into the Income Tax (Jersey) Law 1961 through Article 4 of the Draft Law.
- 3.2 I have not spent time analysing why the current law is defective, but have relied upon the assurances of the Minister for Treasury and Resources in the Report on the Draft Law⁸.
- 3.3 The new criminal sanction for failure to submit a return in new Article 21B moves the criminal measure from Part 22 (General Provisions as to Prosecutions and Penalties) of the Income Tax (Jersey) Law 1961 to Part 4 (Returns) where it might be argued that it more naturally belongs, being specifically targeted at a failure to make a return.
- 3.4 There is an existing civil penalty for failure to make a return in Article 17A of Income Tax (Jersey) Law 1961. This prescribes a fixed penalty of either £100 or £300 depending on the type of return required. The lower penalty applies to returns of information from employers and contractors in the construction industry. For prolonged failure there is a monthly penalty, but in most cases, the penalty can be mitigated where the person concerned either has no tax liability or a very small tax liability for the year of assessment concerned.
- 3.5 Revenue Jersey has undertaken an in depth review into the powers that are needed to enforce compliance where the civil penalties available have proved inadequate. It is this review that led to the conclusion that existing Article 136 is fatally flawed. The new Article 21B sets out what is regarded as the necessary three step process required for a successful prosecution described in the Report on P.51/2021 on page 6:
- A clearly defined requirement to do something – for example to file a tax return
 - An unambiguous statement that failure to meet this requirement constitutes an offence, and
 - A remedy provided by law.

⁸ [P.51/2021](#) page 6 under the heading 'Improving compliance'

3.6 New Article 21B sets out a range of returns already specified by the Income Tax (Jersey) Law 1961 to which this criminal sanction may apply. They are:

- Personal and corporate tax returns together with supporting information and documents required under Articles 16 and 16A;
- Returns made by a person acting for others who are unable to act for themselves due to incapacity or absence from or not being resident in Jersey under Article 17;
- Returns being lists of persons and income, profits or gains received by them required by notice under Article 18;
- Lists of lodgers and inmates residing in Jersey for 6 months as required by notice given under Article 19;
- Returns of employees and their earnings provided by employers as required by Article 20;
- Returns of subcontractors and payments made to them provided by building contractors under Article 20A;
- Returns of shareholders, share ownership, distributions and loans made companies which are either resident in Jersey or have a permanent establishment there under Article 20B;
- Returns of employees and benefits in kind provided to them required under Article 20C, and
- Returns of profits or gains made by foundations registered under the Foundations (Jersey) Law 2009 required under Article 20D.

New Article 21B(1) specifies that it is an offence for a person to fail, without reasonable excuse, to comply with a notice under any of the above provisions.

3.7 New Article 21B(2) states that a person who commits an offence under paragraph (1) is liable to a fine.

3.8 The structure of the Draft Law therefore meets the stated requirements for a successful criminal sanction set out above in paragraph 3.5. It clearly sets out what the requirements are and specifies that if these are not met then the person has committed an offence, punishable by a fine.

3.9 The use of this measure and when it is implemented against a defaulting taxpayer are crucial to both sides – Revenue Jersey and taxpayers. For Revenue Jersey it is important to have sufficient powers to adequately sanction those who, for reasons of their own, deliberately fail to make returns as required. For some, the imposition of modest civil penalties will not be sufficient to prompt them to regularise their position, and although the Comptroller has power (under existing Article 23) to raise an assessment in the absence of a return, there may be insufficient information to make an adequate assessment of the tax due. For the taxpayer, the balance needs to recognise that some of those with obligations under the law may struggle to meet those obligations for understandable reasons.

- 3.10 It is important, therefore, to the efficient operation of the tax system in Jersey, that the right balance is struck in applying this criminal power. If used too rarely, there might be concerns that Revenue Jersey are not taking compliance sufficiently seriously; if used too widely this would undermine the public confidence in the fair and reasonable operation of the Comptroller's powers. This issue was raised with the Comptroller in the Public hearing with the Minister and Comptroller on 25 June. The Comptroller indicated⁹ that where the criminal sanction were to be sought the decision to prosecute would be with the Attorney General, but that early engagement with the Law Officers Department would normally guide the Comptroller as to the suitability of taking the case.
- 3.11 Article 4 of the Draft Law also introduces new Article 21C which supplements Article 21B described above. This introduces a power to include other persons in a prosecution under Article 21B if this is appropriate. It sets out a range of individuals connected with a body corporate who might also be guilty of an offence.
- 3.12 Where an offence under Article 21B is committed by:
- A limited liability partnership,
 - A separate limited partnership, or
 - A body corporate

then if the offence is proved to have been committed with the consent or connivance of, or to be attributable to the neglect of a relevant officer (as defined) of the body corporate or partnership, they will also be guilty of an offence and liable in the same way as the body corporate or the partnership to the specified penalty. New Article 21C(3) sets out quite a comprehensive definition of 'relevant officer' which does not merit repeating here.

- 3.13 I do have a slight concern with new Article 21C in that it provides for an 'additional' conviction, rather than moving the conviction from the corporate body or partnership to the officer concerned, but this potential duplication of penalty should be rare in practice. It is to be hoped that the Attorney General, in the exercise of their powers to bring a prosecution will ensure that justice is served. It would be difficult to suggest an amendment to this power, as the ability to convict an officer depends on the initial conviction of the body corporate or partnership concerned, so the answer to fairness probably lies in the penalties imposed.
- 3.14 One possible omission in the new Article 21C is what is termed in the UK a 'shadow director'. This term is used in corporate law to identify a person who is not overtly involved in the management of a body corporate, but who is operating 'behind the scenes' (literally, in the shadows) by asking or requesting that the directors or partners of the business behave in a certain way, take

⁹ [Transcript of the Public Hearing](#) on 25 June 2021 at page 6 in response to questions from Senator Valois

certain decisions or act in a way they desire. They are the ‘invisible puppet masters’ acting out of sight.

- 3.15 UK law – both commercial and tax law – recognises the existence of shadow directors, using the definition of ‘a person in accordance with whose wishes the directors (or partners) are accustomed to act’. This is often a useful extension of the law to cover such situations, but as the term is not currently used in Jersey it is not surprising that it has not been included here. This might be something to consider for future changes to the law, if it is considered a potential issue in Jersey.

Key Finding 3: The structure of the new measure providing criminal sanction for failure to make certain types of return matches the stated requirements for effective criminal powers and is a proportionate response to wilful failure to make a return. The power to impose criminal penalties on officers of bodies corporate or partnerships is an important extension of this but might be enhanced in the future by including ‘shadow directors’.

New criminal offence of concealing information

- 3.16 This new offence is related to the new civil powers to require information through the serving of an information notice which are dealt with in Chapter 5 of this report.
- 3.17 Article 37 of the Draft Law introduces Part 6A into the Revenue Administration (Jersey) Law 2019. This new law covers the serving of information notices requiring the production of information which the Comptroller reasonably requires in relation to a person’s tax position. Most of Part 6A deals with the powers and the civil penalties for failure and refusal to provide the required information.
- 3.18 However, new Article 27H of Revenue Administration (Jersey) Law which falls within Part 6A sets out a criminal sanction which can be invoked at the choice of the Comptroller. It applies when the Comptroller has requested information as to a person’s tax position (whether a direct request or a third party request) and applies whether or not that request is made through the serving of an information notice, unless the Comptroller has specified that Article 27H does not apply.
- 3.19 The Article sets out the generality of the criminal offence and sanction – that a person who knowingly and without reasonable excuse alters, conceals, destroys or otherwise disposes of information requested by the Comptroller is guilty of an offence punishable by a term of imprisonment for two years and a fine. Article 27H(3) goes on to set limitations to the application of the offence.

- 3.20 Where the information request was not made by serving an information notice, there is no offence committed if the information is destroyed after 12 months from the date of the request, or after any withdrawal of the request.
- 3.21 Where the information requested was by service of an information notice, there is no offence committed if the Comptroller has given permission, or in the absence of such permission with the leave of the Royal Court.
- 3.22 As this is a criminal sanction, there is no separate right of appeal, the case being dealt with through the normal criminal judicial process.

Other changes to criminal sanctions

- 3.23 There are other criminal sanctions in the Income Tax (Jersey) Law 1961 which are also flawed, but these have been corrected by changes in detail in the existing provisions. In general, the existing provisions provide for a fine for certain offences but fail to specifically state that failure to do the specified action (or in some cases doing a specified action) is an offence. Accordingly several Articles of the draft law correct this by inserting the words “commits and offence and is” before the words “liable to a fine”.
- 3.24 These changes ensure that the existing criminal sanctions in the Income Tax (Jersey) Law 1961 work effectively and follow the desired structure identified by the review carried out by Revenue Jersey and legal advisers, and explained at paragraph 3.5 above.
- 3.25 For the record, the following criminal sanctions have been updated in this way:

Existing Article	Offence concerned	Article making the amendment
41F	Fraudulent use of exemption certificates in the construction sector	5
89	Issue of and content of dividend warrants	6
139	Refusal to allow deduction of tax	9

- 3.26 Existing Article 137 of the Income Tax (Jersey) Law 1961 provides that fraudulently providing a return for the purpose of Income Tax Law which is incorrect in a material particular is a criminal offence and specifies a penalty. This already meets the standard for effective criminal sanction described in paragraph 3.5 above. Article 8 of the Draft Law significantly extends the remit of the current offence.
- 3.27 The existing criminal sanction envisages that the person making the fraudulent return is also the person who is liable to income tax based on the return or claim. It does, however, recognise that the information may not have been provided directly by the person themselves, but holds them liable in any event

unless they can prove that the return was submitted without their consent or connivance.

3.28 Article 8 of the Draft Law extends this criminal offence to the provision of a fraudulent return which has a bearing on “any person’s” liability to income tax, rather than the person providing the information (whether directly or not). This provides a much wider class of criminal sanction which can be imposed on any person providing fraudulent returns or claims to Revenue Jersey, whether or not it affects their own tax liability.

3.29 In assessing the balance of this new measure my first consideration is that any person fraudulently providing information to a tax authority should bear a sanction. However, Article 137 specifies a term of imprisonment of 15 years which is a very serious sanction indeed. Whether it is a proportionate sanction will obviously depend on the facts of the case, and on balance it is probably reasonable to rely on the judgement of the Attorney General and the operation of the Royal Court to be sure that justice is properly served in these cases.

Key Finding 4: The extension of the existing criminal sanction for the provision of a fraudulent return to any person unrelated to the taxpayer affected is a significant widening of Revenue Jersey’s powers. However, the imposition of a criminal penalty is not unreasonable in these circumstances. I note that a prison term of 15 years imposed by this (existing) provision could be regarded as excessive.

4 Striking out appeals with no merit

- 4.1 The Comptroller of Revenue indicated in the public hearing with the Minister for Treasury and Resources held on 25 June 2021 that there were a number of cases going before the Commissioners which were essentially a method of ‘filibustering’, of a person (including a corporate body) using every opportunity not to provide certain information or to comply with certain requirements¹⁰. These appeals often have no merit in terms of proper legal grounds of appeal, but nevertheless delay matters and prevent Revenue Jersey from taking the next step along a compliance route until the appeal has been heard.
- 4.2 Articles 13 to 15 of the Draft Law therefore introduce a new power to the Comptroller to refuse an appeal if in their opinion there are no admissible grounds for the appeal.
- 4.3 The power for the Comptroller to refuse an appeal is inserted into the existing Article 27 to the Income Tax (Jersey) Law 1961 which sets out the broad rights of appeal against assessments. This is achieved by inserting new paragraphs (1A) to (1C). Paragraph (1A) sets out the right of the Comptroller to refuse the appeal, based on the content of the notice of appeal.
- 4.4 Paragraph (1B) requires the Comptroller to notify the appellant and the Commissioners in writing of the reasons for the refusal; this must be done within 40 days of receipt of the notice of appeal.
- 4.5 The appellant then has the right to appeal against the refusal by giving notice to the Comptroller within 40 days of receiving the notice of the reasons for the refusal. A small amendment to existing Article 28 requires such a notice to set out the grounds of the appeal (in common with the existing requirement).
- 4.6 Article 15 of the Draft Law sets out the procedure for the appeal against the refusal by the Comptroller, by inserting new Article 28A into the Income Tax (Jersey) Law 1961. This provides that the Commissioners must determine such an appeal by considering the notices and other documents provided to them and may then:
- Refuse the appeal against the refusal,
 - Allow the appeal, or
 - Give notice of a date for a hearing of the appeal.

In each of these cases the Commissioners must give written notice of the determination and where the appeal is refused, must specify the grounds for refusal.

- 4.7 The new power is deliberately set down to ensure that the appellant is not granted a hearing automatically into the refusal of the appeal, as that would be

¹⁰ [Transcript of public hearing](#) 25 June 2021 page 11

self-defeating. The Comptroller confirmed in evidence to the Panel¹¹ that the Commissioners would normally seek to ensure that they had heard from both parties before reaching a determination, and this should therefore be regarded as a reasonable safeguard for the taxpayer against what might otherwise be an unfair exercise of the Comptroller's powers.

***Key Finding 5:** The new measure for the Comptroller to strike out appeals which have no merit is a sensible development to prevent the Commissioners from becoming burdened by spurious appeals. There is a reasonable balance between the rights of the Comptroller and taxpayer safeguards, which will operate through a right of appeal against the refusal and the process employed by the Commissioners to hear such an appeal. The absence of a right for the appellant to request a hearing in person is reasonable under the circumstances.*

¹¹ [Transcript of public hearing](#) 25 June 2021 page 11

5. Civil information powers

- 5.1 The Draft Law introduces (by way of Article 37) a new Part 6A (comprising new Articles 27A to 27H) into the Revenue Administration (Jersey) Law 2019. This sets out new powers for the Comptroller to require production of certain information from either taxpayers or third parties.
- 5.2 New Article 27B sets out the general powers of the Comptroller to serve an information notice on a person. The notice will be served in writing and be signed by the Comptroller or an officer authorized for that purpose which will specify the information required, and when and where it is to be provided. The notice can be issued in two circumstances:
- Where the person has been given a reasonable opportunity to deliver the information required but has failed to do so, or
 - Where the Comptroller reasonably suspects that if such a request were made, the person would seek to conceal or destroy the information.

The power to serve a notice is available where the Comptroller reasonably requires information as to a person's tax position.

- 5.3 I am concerned by the requirement that the notice must be physically signed by the Comptroller or an authorized officer. The requirement for a 'wet' signature places a practical expiry date on the future of this legislation in an environment when digital developments are not only an essential tool in tax administration, but are developing rapidly in scope and deployment by tax authorities around the world. Carrying this requirement in law risks one of two outcomes:
- That the legislation will need to be amended to recognise developments in digitising tax administration in Jersey, or
 - That the need to amend the legislation is overlooked, giving rise to the unattractive outcome that information notices are appealed and successfully overturned as a result of failure to meet the statutory requirements.

Key finding 6: *The requirement for a 'wet' signature on information notices in new Articles 27B and 27C is not 'future proof' and will necessitate amendment of this legislation in the future to keep up with digital developments.*

Recommendation 2: *That an amendment is proposed to require the approval of information notices by the Comptroller or an authorized officer, rather than their signature.*

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- 5.4 New Article 27C permits the Comptroller to serve an information notice on a third party – that is, someone other than the taxpayer. The notice, which can be served when the Comptroller reasonably requires information from a third party as to the tax position of a person or class of persons, can require information about a specific named taxpayer or a class of taxpayers, and is issued when either the Comptroller has already issued a notice under new Article 27B or the Comptroller considers that the issue of such a notice would not be expedient in the circumstances.
- 5.5 Where a third party notice has been issued which specifically identifies a taxpayer, the Comptroller must in most cases, serve a copy of that notice on the taxpayer concerned. Where the Comptroller believes that doing so would prejudice the collection or recovery of tax or the investigation or prosecution of tax matters this is not necessary.
- 5.6 New Article 27C(6) specifies that it is a criminal offence to disclose without reasonable excuse, the fact that a third party notice has been served, or the contents or any information relating to such a notice. Article 27C(3) states that a third party notice may specify matters that the Comptroller considers reasonable, including a warning regarding the criminal penalty for disclosure.
- 5.7 Given that Article 27C(6) specifies an automatic criminal offence (assuming no plea of reasonable excuse is available) for disclosure, I regard it as unsatisfactory that the warning of this is included in the list of matters that ‘may’ be specified by the notice. When a person is exposed to criminal sanction for doing something, they must be made aware of this, and although the Comptroller stated in the public hearing¹² that this criminal sanction would not apply very often, the fact that it is available and the third party may be unaware of it is not sufficient.

***Key finding 7:** The warning to a third party regarding potential criminal sanction for disclosures about a third party information notice is included in the list of matters that may be included in the notice. I believe that this is not sufficiently rigorous where a criminal sanction is available.*

***Recommendation 3:** That an amendment is proposed to require the third party notice to include a warning about the possibility of criminal sanction for disclosure.*

- 5.8 When the introduction of civil information powers was put forward in an earlier proposition¹³ a good deal of concern was expressed, particularly by firms of accountants and tax advisers about the proposed powers and the lack of taxpayer safeguards in the proposals¹⁴. In the event Article 26 was withdrawn

¹² [Transcript of public hearing](#) at page 21

¹³ Article 26 of the Draft Revenue Administration (Jersey) Law 201- [P.122/2018](#)

¹⁴ CSSP report on P.122/2018 ([S.R. 3/2019](#)) Paragraph 52

but the Panel recommended¹⁵ that there should be an appeal process accompanying such new powers to provide balance to the law and protection to taxpayers.

- 5.9 Accordingly, New Article 27D concerns appeals against information notices. This confers a right of appeal against an information notice which requires the appellant to give notice in writing to the Comptroller no later than 30 days after the date of service of the information notice.
- 5.10 Article 27D(2) specifies that a ground of appeal in relation to the requirement to produce a document is that the document is not in the possession or power of the person on whom the notice was served. Article 27D(3) limits the right of appeal against a third party notice to this and the case where compliance with a notice is unduly onerous. Article 27D(4) invokes Part 6 of the Income Tax Law (Jersey) 1961 when there is an appeal against a notice. Part 6 deals with procedure and process of appeals, but as it stands applies presently only to appeal against assessments. It is intended that Part 6 will in future cover appeals more generally.
- 5.11 I have considered whether the balance in relation to information notices is right. If the Draft Law is implemented, taxpayers would have a full right of appeal, and in relation to notices served on them in relation to their own tax affairs are likely to be able to appeal on the grounds that they do not believe that the information is 'reasonably required' by the Comptroller. The concerns expressed previously about so-called 'fishing expeditions' cannot be wholly dismissed, but the appeal right is an important one. It is also an important principle that the Comptroller has a civil power to seek information where a recalcitrant taxpayer is unwilling to provide it. I am of the opinion that this measure strikes a fair balance.

Key finding 8: The balance between the needs of Revenue Jersey in relation to tax compliance and proper safeguards for the taxpayer is always a difficult area, but the new Information Notice powers do come with rights of appeal which will allow a taxpayer to challenge the Comptroller if they do not believe that information required reasonable relates to their tax position. The rights of third parties to appeal against third party information notices are very limited but do include consideration of the cost and effort of complying with a notice.

- 5.12 Once the Comptroller has obtained information using these powers new Article 27E allows further powers to be exercised. The powers to retain documents for a period of time to allow for full and complete inspection, and the right to take copies of the document are not controversial. I have assumed that the right of appeal would extend to circumstances where the Comptroller unreasonably retains documents which are needed by the appellant, which would seem reasonable.

¹⁵ [S.R. 3/2019](#) recommendation 5 on page 14

- 5.13 The Comptroller can further require of the person on whom the notice was served to provide an explanation of any documents provided in response to the notice or can require the person to state where any missing documents are, to the best of their knowledge and belief.
- 5.14 Taken together these measures provide a formidable battery of powers to enable Revenue Jersey to undertake compliance work in respect of tax liabilities owed by Jersey taxpayers. As noted above, the right of appeal against a notice is an important safeguard for taxpayers. While these powers do go beyond what is presently available to the Comptroller in terms of ease of use and practical application, they are not excessive in the light of powers available in other jurisdictions.
- 5.15 New articles 27F and 27G provide for civil penalties for failure to comply with information notices and for appeals against penalties. The fixed penalty amount of £300 is supplemented by daily penalties of up to £60 per day for continued default or delay, which can only be levied once the initial penalty has been notified. The penalties are not mandatory – the provision allows the Comptroller to serve a notice of penalty on a person, and the daily penalty may be of an amount of up to £60 per day. This provides the opportunity for daily penalties to be levied at a low initial rate and increased during a continued period of default.
- 5.16 The grounds of appeal against a penalty notice are that:
- The person has taken all reasonable steps to comply with the information notice, and
 - The amount of the penalty is unreasonable.

However, there is no right of appeal against a penalty if the information sought is information which is required to be kept under any Revenue Law.

- 5.17 These measures are supplemented by a new criminal offence – that of concealing information requested under an information notice. This is dealt with in paragraphs 3.16 to 3.22 of this report.

6 Civil penalties – amendments

- 6.1 The civil penalties for failure to make a return are at Article 17A of the Income Tax (Jersey) Law 1961. This article prescribes penalties for making a return after the due filing date, which vary in amount depending on the type of return required to be made.
- 6.2 However, when the law was updated and amended, the requirement for a person to make a return on behalf of someone else, set out in Article 17 of the Income Tax (Jersey) Law 1961 was not specifically included, and although a fixed initial civil penalty currently applies in relation to late returns made under Article 17, some of the additional penalty provisions, such as the daily penalty and the penalty mitigation provisions do not apply.
- 6.3 Article 17 relates to a return made by a person acting in some capacity on behalf of another person who is either incapacitated or not resident in or not present in Jersey and for that reason the latter person cannot be obliged to make a return under Article 16 *ibid*.
- 6.4 Article 2 of the Draft Law amends Article 17A to provide for a penalty for late returns under Article 17 by inserting the appropriate reference each time Article 16 is mentioned, putting returns made on behalf of another on the same footing as returns made by the person themselves.
- 6.5 Article 17A of the Income Tax (Jersey) Law is also amended by Article 10 of the Draft Law to change the references to the right of appeal. In common with a number of the provisions in the Draft Law, instead of referring to specific Article numbers, the appeal rights are referred to as 'Part 6', meaning that slight alterations to Article numbers made by updating the Law in the future will not necessitate further consequential amendments. The specific Articles updated in this way are not dealt with in detail by this report. The changes are entirely sensible and make no material change to the operation of Tax Laws in Jersey.
- 6.6 Article 23 of the Draft Law makes changes to the Goods and Services Tax (Jersey) Law 2007 in relation to a civil penalty provision. The change applies to Article 71 which provides for penalty tax to be levied by way of a civil penalty for conduct involving dishonesty. The amendment simply re-words existing Article 71(3) to make clear that no penalty is imposed under Article 71(1) or 71(2) in respect of conduct for which the person has been convicted of an offence, preventing both a civil and a criminal penalty applying to the same offence. There is no real change in the position after the amendment, the change is a matter of clarification.

7 Other matters

- 7.1 Article 20 of the Draft Law inserts a power into Schedule 5 to the Income Tax (Jersey) Law 1961 at Article 23 to permit the States Assembly to review (and amend if appropriate) the provisions for collection of the 2019 liability from PYB taxpayers in accordance with Recommendation 8 in the CSSP's report on their review of the Income Tax (Payment of 2019 Liability) Regulations 2021¹⁶.

Goods and Services Tax amendments

- 7.2 Articles 22 to 25 of the Draft Law makes some amendments to the Goods and Services Tax (Jersey) Law 2007. Article 22 makes a change to bring the provision in Regulation 4 of the Goods and Services Tax (Jersey) Regulations 2007 into primary legislation. Regulation 4 (which will be Article 19(1) as amended) provides that Goods and Services Tax does not apply to certain supplies made by the States other than in the course or furtherance of a business. Article 25 of the Draft Law deletes Regulation 4 which is no longer needed.
- 7.3 Article 24 of the Draft Law modifies the requirement on the Comptroller to register a person for Goods and Services Tax under Schedule 1 of the Goods and Services Tax (Jersey) Law 2007. The existing provision in Schedule 1 requires a person to notify the Comptroller that they are liable to be registered when the relevant criteria are met. Paragraph 4 of the Schedule then requires the Comptroller to register the person following notification.
- 7.4 The flaw in this legislation is that if a person fails to notify the Comptroller, although paragraph 3(5) of the Schedule specifies that the person is guilty of an offence for failure to notify, no action is possible by the Comptroller to register them and collect the tax due.
- 7.5 Article 24 of the Draft Law therefore amends paragraph 4(1) of Schedule 1 to require the Comptroller to register a person when they are satisfied that the person is liable to be registered, whether or not the person has notified their liability to be registered.
- 7.6 I did consider whether the Comptroller should have some discretion in this respect, particularly in relation to a business which exceeded the registration limit without realising it and this was subsequently discovered by the Comptroller at a point when the business had ceased to be required to be registered.
- 7.7 Although it is not possible for the Comptroller to exercise discretion in this power, there is a suitable route to enable the Comptroller to help businesses inadvertently in this position for which registration for a historic period would be

¹⁶ CSSP report 22 March 2021 [S.R.8/2021](#)

a hardship. Once a person no longer meets the requirement to be registered they can apply to deregister, and here the Comptroller has some discretion in the application of the power to cancel the registration, which can be backdated if the Comptroller considers that is an appropriate step to take.

Key finding 9: The obligation on the Comptroller to register a person for Goods and Services Tax, irrespective of whether the person has notified their liability to be registered is an important step in 'plugging a gap' in compliance powers related to Goods and Service Tax. There is sufficient scope in the existing law to permit the Comptroller some discretion to help a business which has accidentally exceeded the registration threshold for a short period in the past, while protecting public revenue from abuse.

Publication of Commissioners of Appeal determinations

- 7.8 Article 28(3) of the Draft Law amends Article 8 of the Revenue Administration (Jersey) Law 2019 to permit the Commissioners of Appeal to publish details of cases they have determined. This is done by removing the general bar on disclosure of information in relation to publication by or on behalf of the Commissioners of any determination or summary of a determination.
- 7.9 New Article 8(9B) permits publication of cases heard before this change was introduced, but also requires that the publication of determinations must not include personal information relating to and identifying a particular person either directly or by deduction. This permits redacted determinations to be published in relation to historic determinations where this is considered appropriate.
- 7.10 I was concerned to establish how the cases for publication would be selected to ensure that cases were not chosen to give a particular view of any measure or provision which might distort the correct understanding of a matter about which appeals had been heard by the Commissioners. The Comptroller indicated at the public hearing that the cases would be selected by the Commissioners¹⁷ and would not be influenced by Revenue Jersey, so I am satisfied that the concerns of tax agents concerning publication of appeal determinations¹⁸ will be satisfied amply by the proposals.

Key finding 10: The publication of determinations by the Commissioners of Appeal is a welcome development and improves transparency in the application of Tax Law in Jersey.

¹⁷ [Transcript of public hearing](#) 25 June 2021 page 16

¹⁸ Expressed by Grant Thornton in their response to CSSP Review of the Draft Revenue Administration (Jersey) Law reported in [S.R. 3/2019](#) at paragraph 37 on page 10.

Provision to charge interest and penalty interest on late paid tax and to pay interest on overpaid tax

- 7.11 Article 17 of the Revenue Administration Law (Jersey) 2019 provides for interest to be charged in late payment of tax. This provision has not yet commenced, pending setting appropriate interest rates. Article 32 of the Draft Law seeks to amend the provision by extending the interest charge to 'remittances' of tax in addition to payments of tax. Remittances are defined by Article 31 of the Draft Law, inserting the definition into existing article 16 – the interpretive provisions.
- 7.12 A remittance is defined as an amount to be remitted to the Comptroller under various articles of the Income Tax Law, and covers deductions made by employers of tax from payments to employees, required to be deducted and remitted under Article 41B and similar deductions made by building contractors from payments made to subcontractors under Article 41E.
- 7.13 The effect of the changes to Article 17 is to include payments by employers and building contractors within the definition of amounts on which interest can be charged for late payment (or remittance). A further amendment (New Article 17(4)(c)) prevents interest from arising on late payments by taxpayers who are not required to pay instalments for the relevant year of assessment.
- 7.14 Article 18 makes provision for a charge to penalty interest once a payment is three months late. Article 18 is also not yet in force but is amended by Article 33 of the Draft Law in line with the amendments described above in relation to Article 17. Article 33 also introduces a saving provision preventing penalty interest from applying to a late payment where the taxpayer is not required to make instalment payments under Article 41A of the Income Tax Law, replicating the provision in relation to standard interest charges in Article 17(4)(c).
- 7.15 Article 33 of the Draft Law also introduces a right of appeal (by inserting new Article 18(8)) against a penalty interest charge by giving notice of appeal to the Comptroller within 40 days of becoming aware of the decision by the Comptroller to impose penalty interest. This is a welcome development.
- 7.16 Article 19 of the Revenue Administration (Jersey) Law 2019 provides for interest to be paid on refunds of overpaid tax, and is also not yet in force. Article 34 of the Draft Law amends the wording of Article 19 slightly to cover the repayments of overpaid remittances and further provides that interest is not due on repayments to persons not liable to pay instalments for the relevant tax year, mirroring the provisions above regarding interest charges.

Required period for retention of records

- 7.17 Article 25 of the Revenue Administration (Jersey) Law 2019 specifies that records required to be kept under Article 24 must be retained for two years after the end of the year of assessment or calendar year they were created.

- 7.18 Article 35 of the Draft Law allows the period for which records are kept to be set at a different by Regulations by introducing such an enabling power as Article 25(2).

***Key finding 11:** There appears to be a mis-match between the requirement on individuals to keep records for two years and the ability of the Comptroller to raise assessments in the event of careless action by a taxpayer for up to five years. It would be sensible for Revenue Jersey to explain this and the desirability of retaining records for longer than the bare minimum in any public guidance on this subject.*

***Recommendation 4:** That guidance provided to individuals on retention of records and the new limited enquiry window makes clear that it may be desirable to retain records for longer than the bare minimum time permitted by law in the event of potential compliance interventions by Revenue Jersey in the future.*

- 7.19 Article 38 of the Draft Law makes slight changes to the wording of Regulation 18 of the Goods and Services Tax (Jersey) Regulations 2007 to make the retention period for documents giving evidence of supplies made and received clearer. The retention period is unchanged at six years, but this is now expressly stated in the amended Regulations 18(1) and 18(3).

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