

STATES OF JERSEY



DRAFT REVENUE ADMINISTRATION (JERSEY) LAW 201- (P.122/2018): ADDENDUM TO REPORT

**Presented to the States on 9th April 2019
by the Minister for Treasury and Resources**

STATES GREFFE

COMMENTS

Further information following the decision to refer back P.122/2018, the Draft Revenue Administration (Jersey) Law 201-, to the Minister for Treasury and Resources under Standing Order 83

1. During the debate on [P.122/2018](#), the Draft Revenue Administration (Jersey) Law 201- (the “RAL”), States Members voted to refer the draft legislation back to the Minister for Treasury and Resources, so that clarification could be provided on certain matters. The purpose of this Addendum is to provide the clarification requested by the Assembly.
2. This report focuses on the issues raised with the draft RAL itself. However, there were some issues raised during the debate on 26th February 2019 that touched on concerns with Jersey’s wider tax regime. While these matters are entirely distinct from the RAL, comments are provided in **Annex 1** to this Addendum that set out the intention with regard to these important issues.
3. [Comments](#) have already been provided regarding the Corporate Services Scrutiny Panel’s (“CSSP”) amendments to the draft RAL. A table in **Annex 2** outlines the Minister’s response to the CSSP’s 5 recommendations.

Future architecture of Jersey’s tax legislation

4. The RAL is intended to be a standalone piece of legislation that will govern the administration of all Jersey’s revenue-streams, providing an effective and consistent approach to the administration of all taxes and, in due course, social security contributions. It will set out the rules for the payment of taxes and charges, and the steps that will be taken if a person fails to meet their obligations. The core policies for each tax measure will continue to be contained in the relevant and separate primary legislation.

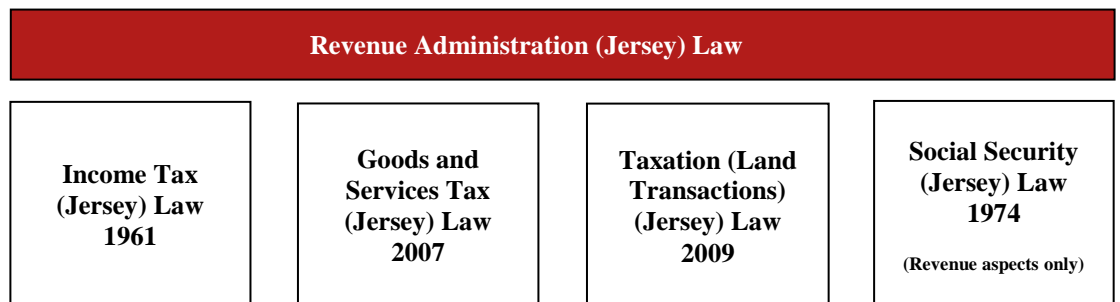


Diagram 1: The principles of the RAL will apply across taxes and contributions

5. Due to the wide-ranging nature of the RAL, it is being prepared and lodged with the States Assembly in 2–3 tranches running in close succession. The first tranche prioritises work needed as part of the revenue transformation programme (which includes the implementation of a new computer system, and paves the way to online filing and assessment) , and focuses on –
 - the legislation needed to introduce this overarching tax administration architecture (Parts 1 and 2 of the RAL);

- important information-sharing powers across Government to support One Government (Part 3);
 - a new civil penalty regime (Part 4);
 - a new interest regime (Part 5);
 - certain new record-keeping requirements (Part 6).
6. Statutory powers are already contained in tax legislation, which enable Revenue Jersey to call for the production of business records. There will be no new production powers contained in the first tranche of the RAL, and further consultation on this matter will be conducted before bringing forward proposals in the second tranche.
 7. The first tranche of the RAL has been prioritised and funded by monies provided in MTFP2, to dovetail with the revenue transformation programme.

Issues raised by States Members about the RAL

Issue 1 – Distinction between civil and criminal penalties

8. To provide further explanation about the need for a new civil penalty regime in the RAL, it is useful to refer to the internationally accepted tax compliance pyramid.

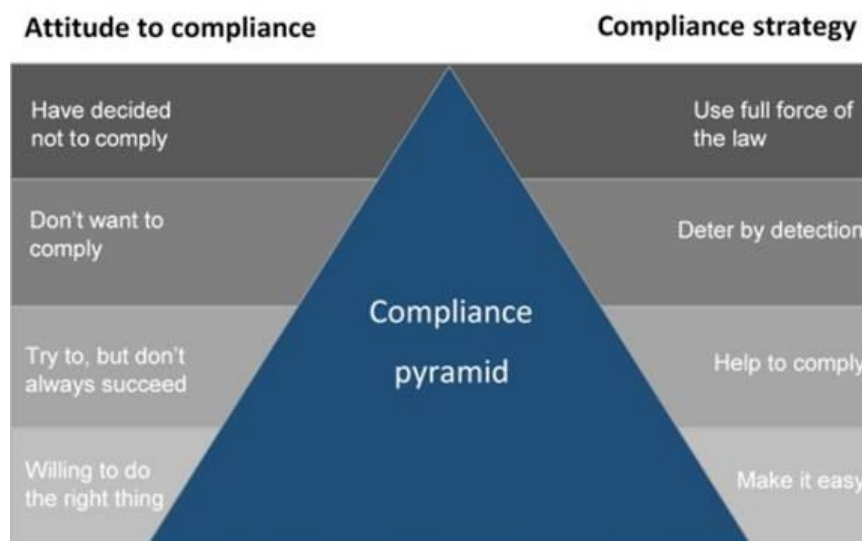


Diagram 2: Tax compliance pyramid

9. The pyramid illustrates that most people want to be tax-compliant and try their best to be. Revenue Jersey's approach to the majority of taxpayers is to try and make it as easy as possible for them to comply, and help them where they have difficulty. The revenue transformation programme and the new computer system being implemented should contribute significantly to making tax compliance easier for these groups.
10. Some taxpayers do not want to comply, and an even smaller minority decide to be non-compliant. To address non-compliance by these taxpayers and achieve changes in behaviour, a range of penalty options are required.

11. Up to now, criminal sanctions have been the only route available to Revenue Jersey for dealing with negligently or fraudulently prepared tax returns. Criminal sanctions can be unwieldy and comparatively expensive for Revenue Jersey to pursue. Because criminal sanctions involve court action, they can also be traumatic for taxpayers and have a severe impact on their business or livelihood, particularly in a small Island. Criminal sanctions are thus appropriate for dealing only with the very small minority of people at the top of the compliance pyramid who are engaged in serious and protracted tax fraud and evasion.
12. Most modern tax administrations therefore operate a regime of civil penalties (alongside criminal sanctions), to deal with more minor misdemeanours amongst those who “Do not want to comply” in the compliance pyramid. Civil penalties are a less invasive option for these taxpayers. They do not involve court action and would be simpler and more effective for Revenue Jersey to administer.
13. The RAL is therefore proposing –
 - a new civil penalty regime that will address the majority of cases of deliberate and careless taxpayer behaviour, and
 - more focused criminal provisions that apply only to fraudulent conduct by taxpayers.
14. The civil penalty regime will provide parameters around the penalties that Revenue Jersey can apply, depending on the taxpayer’s behaviour. These parameters are set out in the RAL and therefore subject to full scrutiny by the States Assembly. This penalty framework provides much greater transparency and consistency for taxpayers than currently exists in their dealings with Revenue Jersey.

Issue 2 – RAL is being introduced in phases

15. Due to the complexity of the task, it has been made clear from the outset that the process would have to be done in 2–3 tranches, following in quick succession. Details have been provided to the CSSP of the main provisions to be included at each tranche of the process and the overall timeline for the first and second tranches. The most up-to-date timeline is appended in **Annex 3** to this Addendum.
16. Work is well underway on the second tranche of the RAL, and draft legislation will be published later this year. The important issues of information production powers will be addressed in the second tranche. Once the first and second tranches have been passed, much of the work on the RAL will be complete.
17. Tax policy reviews can be long and complicated, and require a good degree of consultation. Bringing this legislation in phases allows more focus on the contents of each phase. This approach will result in closer scrutiny by the CSSP and the States Assembly, and, as a result, a better Law.

Issue 3 – Insufficient taxpayer safeguards in the RAL

18. The issue of taxpayer rights and safeguards is taken very seriously. A range of safeguards already exist in the tax administration regime, and these will all continue to be available after the RAL has been introduced. These safeguards include –

- the ability for a taxpayer to ask for their case to be reviewed by a senior Revenue Jersey officer;
 - in certain cases, the Comptroller will review the details of a case and make a determination, at the request of a taxpayer;
 - a taxpayer can make an appeal to the independent Commissioners of Appeal, free of any charge; and
 - ultimately, a taxpayer can appeal to the Royal Court (and the higher courts).
19. One of the key features of the RAL is that it will introduce a new civil penalty regime in respect of incorrect declarations made to the Comptroller (as outlined above) that will set out a clearly defined framework of penalties for different types of taxpayer behaviour. This will provide taxpayers with important certainty and transparency over their tax affairs. The Comptroller has given an undertaking to the Island’s tax agent community that guidelines on the penalties will be drafted and consulted upon in 2019, before the penalties come into effect. These guidelines will take account of best international practice as set out in the [European Taxpayer’s Code](#), published by the European Commission.
20. Further safeguards for taxpayers have also been discussed with the tax agent community and are being prepared for the second tranche of the RAL.

Issue 4 – Interest rates

21. In accepting the CSSP’s amendment, the framework for setting interest rates will be contained within Regulations that are subject to scrutiny and which will be debated by the States Assembly.
22. The intention is that all interest rates would be pegged to the Bank of England base rate plus a small premium, reflecting the fact that the Treasury should not be used as “the lender of first resort”. There would be limits to interest rates contained in the Regulations, to ensure they cannot rise to excessive levels. The limits that are planned to be proposed are –
- a maximum of base rate plus 5% for underpayments; and
 - a minimum of base rate plus 2% for overpayments.
23. It should be made clear that it is not the intention to propose interest rates for underpaid taxes at 8% above the Bank of England base rate.

Issue 5 – Role of the Jersey Law Commission

24. During the States debate, there was a reference made to the report of the Jersey Law Commission on administrative redress in the Island.
25. In October 2017, the Jersey Law Commission published a report entitled ‘[Improving Administrative Redress in Jersey](#)’. Amongst other conclusions, the report recommended that existing tribunals (including the tax Commissioners of Appeal) be amalgamated into a new judicial body – the Jersey Administrative Appeals Tribunal (“JAAT”). The then Chief Minister published his [initial response](#) to the report in January 2018, in which he supported the report’s findings.

26. Pending these reforms, the changes to the Commissioners of Appeal have been limited to minor modifications in the course of transferring the relevant Article from the [Income Tax \(Jersey\) Law 1961](#) (“ITL”) to the RAL.
27. That being said, a power to publish the decisions of the Commissioners of Appeal is being considered as part of the second tranche of the RAL. This would be subject to discussions with the Commissioners and consultation about safeguards over taxpayer anonymity.
28. This information is intended to help States Members in preparation for the upcoming debate on the RAL. If Members require further information or wish to discuss any matter, please contact the Comptroller of Taxes (Richard Summersgill) at r.summersgill@gov.je.

Issues raised about Jersey's tax regime more broadly

1. States Members raised several issues during the RAL debate which, albeit not related to the RAL, are nonetheless important to the Assembly.

Personal income tax reform

2. Some States Members expressed the view that the RAL should not be considered until personal income tax reforms relating to married couples and civil partners have been introduced in Jersey.
3. While the urgency of this issue is fully appreciated, it is important to be clear that any forthcoming changes to personal income tax are a policy matter. This is an entirely separate issue from the RAL, which deals purely with matters of tax administration.
4. On 8th March 2019, the Minister [set out her clear commitment](#) for reforming the personal income tax regime, for which the timetable is as follows –
 - (a) extensive public consultation continues to ensure that the views of all stakeholders are heard and understood in arriving at recommendations;
 - (b) recommendations brought to the Assembly alongside the Government Plan when it is lodged later this year for an in-principle decision;
 - (c) draft legislation will follow in 2020 reflecting the decisions of the Assembly; and
 - (d) if this legislation is approved by the Assembly, a new personal tax regime would take effect from the year of assessment 2021.
5. Progress on modernising the personal income tax regime has in the past been hampered by Revenue Jersey's outdated computer system. Now that a significant investment has been made by the States to update the computer system, that barrier to reform has fallen away.
6. States Members can be assured that the reform of personal income tax is progressing as a separate priority from the RAL, and the timetable for personal income tax reform will not in any way be impacted by the RAL work-stream.

The case for a comprehensive review of Jersey's Income Tax Law

7. Concerns were also raised that the ITL has become outdated in parts and is in need of major reform. Some Members expressed the view that no tax changes should be passed by the Assembly, pending the completion of a comprehensive review.
8. A full re-write of the ITL would be a huge project for the Tax Policy Unit to undertake, that would span multiple years and require the investment of significant resources. A commitment has been given to the tax agent community to review

certain issues that have been identified as priorities for them, including interest deductibility rules. Work is currently underway on these priorities.

9. While the concerns of the Assembly are acknowledged, Members are urged not to delay the passing of the RAL (or indeed any other important pieces of tax legislation that may arise), pending the separate examination of married couples' taxation and other aspects of tax policy. The RAL is an important standalone Law that will modernise tax administration in Jersey, providing much-needed clarity and consistency for all taxpayers.

Response to the Recommendations of CSSP on the Draft RAL

The Minister's responses to the specific Recommendations made by the Scrutiny Panel before the previous States debate on the draft RAL are summarised in the table below.

Rec. #	Summary of CSSP Recommendation	Summary of Minister's response
1	Minister should publish clear timeline for future RAL and personal tax reform	A comprehensive work plan was shared with the CSSP in early February 2019. This included administrative matters to be included in the second tranche of the RAL, as well as technical policy work. Detailed plans were shared in respect of 2019, and an indicative programme of work was shared in respect of 2020/21. Recommendation accepted.
2	Prioritise statutory enquiry window and bring forward in Government Plan	Proposals will be consulted on with tax agents in Q2 2019 and resulting legislation will be lodged alongside the Government Plan. Recommendation accepted.
3	Publish guidance on new civil penalties	Guidance is being developed internally and will be shared with tax agents for comment before it is published in 2019. Recommendation accepted.
4	Interest rates should be set by Regulations	Minister has accepted the CSSP's recommendation and will lay Regulations before the States in due course. Indicative interest rates are provided in paragraph 10 of the Minister's comments on the CSSP amendment . Recommendation accepted.
5	An appeal provision should be inserted in respect of information production notices	Minister will not propose relevant Article in RAL. Information production powers will be consulted on with tax agents in Q2 2019 and resulting legislation will be lodged alongside the Government Plan.

Timeline of the second and third tranches of the RAL and other tax policy priorities

Work programme for RAL and related issues of importance to the tax agent community

