

STATES OF JERSEY



DRAFT REVENUE ADMINISTRATION (JERSEY) LAW 201- (P.122/2018): AMENDMENT (P.122/2018 Amd.) – COMMENTS

**Presented to the States on 25th February 2019
by the Minister for Treasury and Resources**

STATES GREFFE

COMMENTS

Corporate Services Scrutiny Panel (“CSSP”) amendment

1. The CSSP has lodged an amendment ([P.122/2018 Amd.](#)) to the Draft Revenue Administration (Jersey) Law 201- ([P.122/2018](#)) to the effect that –
 - (a) the 3 rates of interest be set by Regulations, rather than by Order of the Minister (Amendments 1 to 3); and
 - (b) a right of appeal be introduced in cases where a person has been issued with a notice to produce records by the Comptroller of Taxes (Amendment 4).

Setting the interest rates

2. The Panel has proposed that the 3 interest rates created by the draft Law be set by Regulations rather than by Order of the Minister. As a result, the States Assembly would have a greater role in the setting of the interest rates.
3. In principle, the Minister agrees and **therefore supports the Panel’s amendment** in relation to the setting of interest rates.
4. An Order of the Minister had previously been considered necessary in order to offer the ability to react quickly when the economic circumstances demanded it. Given the likelihood of interest rates rising in the short to medium term, it will be important that there is no significant delay in implementing rate rises into the tax system.
5. However, a similar effect can be achieved – with additional States Assembly oversight – through Regulations, in which the rates are pegged to the Bank of England (“BoE”) base rate (proposed rates are shown in paragraph 10, below). This will ensure that when any adjustment in the rate is announced by the BoE, Revenue Jersey would have the legal certainty that will enable it to make the appropriate adjustment in the IT system.
6. With regard to the level at which the rates will be set, the Minister has noted the Panel’s reference to the indicative rate of 8% proposed in the Taxes Office’s [2017 consultation](#), and the wide spread between the late payment rate and the over-payment rate outlined in the consultation document.
7. In particular, the indicative rate of 8% drew considerable attention, with many respondents to the consultation stating that a rate closer to that set by HMRC (currently 3.5%) would be more appropriate. Different approaches are taken by different jurisdictions; the HMRC rate for late payment is towards the lower end of the scale internationally, and there is no reason why Jersey should closely follow the UK approach in this regard. The rates in Ireland¹ and New Zealand² are currently closer to 8%.

¹ The late payment [rate in Ireland](#) is 0.0219% per day, equating to 8% per annum.

² There is a late payment rate of 8.22% [in New Zealand](#).

8. It is important to achieve a balance appropriate for Jersey. The rate of inflation in Jersey is almost double that of the UK³, so it is not inappropriate for the rates to reflect this. However, the Minister understands that a rate of 8% is reasonably considered by some to be punitive rather than compensatory, and therefore intends for the rate to be set somewhere between the rates set by jurisdictions at the higher and lower ends of the scale.
9. The Minister therefore proposes that the Regulations should contain maximum interest rates and, in order to address the Panel's concern about the differential between the late payment rate and the over-payment rate, should fix the maximum spread between those rates.
10. As an indication, the rates are proposed to be –
 - in respect of interest for late payment, BoE base rate, plus a maximum of 5%;
 - in respect of penalty interest for late payment, BoE base rate, plus a maximum of 7%; and
 - in respect of credit interest for over-payments, a minimum of BoE base rate, plus 2%.
11. The “Bank of England base rate” means the official bank rate determined by the most recent meeting of the Monetary Policy Committee of the BoE, currently set at 0.75%. In order to create an orderly process by which the rates are changed, the Regulations should provide the Comptroller with a reasonable window within which to change the rate in the IT system.
12. The Minister considers this approach to strike the right balance between appropriate legislative oversight, and the need to swiftly adjust rates when necessary.

Appeal rights in respect of information notices

13. The Panel has proposed that a right of appeal is inserted into Article 26 of the draft Law.
14. The Minister is concerned that the amendment may result in significant delays for the Comptroller in conducting tax enquiries. Where a failure to comply is subject to a civil penalty, the proper route of appeal is by appeal of the penalty, rather than by appeal of the production notice. Article 27(6) of the draft Law provides taxpayers with such a right of appeal. The Minister's view is that it would be disproportionate for the Law to envisage an appeal against the notice *and* against the penalty.
15. Except in rare circumstances, formal production powers, such as those proposed in Article 26, are only ever used by the Comptroller as a last resort. It is the practice of the Comptroller to informally request tax information, and most routine enquiries are able to be settled this way. Ordinarily, at least 2 informal approaches are made, normally allowing taxpayers at least 60 days in which to reply. In a small minority of cases, taxpayers do not respond to these informal

³ [Jersey Retail Prices Index – December 2018](#)

requests, and in those cases formal powers are required. It is not the case that the Comptroller uses these powers to “fish” for information.

16. The practical effect of the Panel’s amendment would be to add a *minimum* of 61 days⁴ to a tax enquiry, in cases where the taxpayer has already refused to co-operate with the informal requests. An additional 61 days of delay would result in fewer tax enquiries being brought to a timely close and, despite the Panel’s assertion that there would be no financial implications arising from the amendment, in many cases this would delay the assessment and, potentially, the collection of the Island’s tax revenue. In cases where a taxpayer appeals both a notice and a subsequent penalty, an enquiry would be extended by a minimum of 122 days.
17. The Comptroller is already examining all the powers to obtain tax information, and the Minister intends to bring forward proposals in the next tranche of the Revenue Administration Law – following consultation – later in 2019.
18. In the interim, the **Minister intends not to propose Article 26** (Duty to produce records) in the reading of the draft Law. States Members will then have the opportunity to debate what the appropriate information powers and safeguards are on a holistic level, when the next tranche of the Revenue Administration Law is brought before the Assembly.

⁴ 40 days to appeal the Article 26 notice; plus 21 days’ notice of a hearing of the Commissioners of Appeal (Article 29 of the [Income Tax \(Jersey\) Law 1961](#)). In all likelihood, this period would far exceed 61 days, since the Commissioners sit only 8–10 times each year.