

# STATES OF JERSEY



Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 46) (JERSEY) LAW 202-**

---

**Lodged au Greffe on 22nd September 2020  
by the Minister for Treasury and Resources**

---

**STATES GREFFE**





Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 46) (JERSEY) LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources, the provisions of the Draft Income Tax (Amendment No. 46) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy S.J. Pinel of St. Clement**  
*Minister for Treasury and Resources*

Dated: 22nd September 2020



---

## REPORT

---

### Introduction

This draft Law contains the legislative measures required to remove the prior year basis (the “PYB”) of paying personal income tax and move all taxpayers on to a current year basis (the “CYB”) from 2020.

The Articles relating to the payment of income tax follow on from the commitment made in the first Government Plan 2020-23 to review the income tax payment bases. That review has been accelerated in the light of the coronavirus (COVID-19) pandemic, in order to provide a short-term cash boost to those most financially affected by the Government’s lockdown measures. The longer-term benefits (identified in the following pages) of moving all Islanders to CYB would also be realised. These benefits are set out below.

The first part of this report provides information about the PYB reform proposals. The second part discusses each Article of the ITL Amendment Law.

### *Part 1: Prior year basis (PYB) reform proposals – report*

#### Background

1. The split between individual taxpayers (including married couples and civil partners) who pay on a prior year basis (PYB) and those who pay on a current year basis (CYB) occurred with the introduction of the Income Tax Instalment System (ITIS) and the so-called “payment on account” (POA) regimes in 2006.
2. Broadly speaking, taxpayers who became employed and registered for income tax on or after 1st January 2006 were defined as ‘new taxpayers’. This meant that their ITIS deductions would be credited to the current year’s tax liability, rather than the previous year’s. Employed people registered before 2006 are classified as PYB taxpayers.
3. Additionally, those taxpayers who do not pay by ITIS, such as pensioners and the self-employed, pay on a prior year basis (even where they are strictly classified as ‘new taxpayers’). These individuals are required to make a payment on account in May in the year following the year of assessment, with the balance being due by 30th November that year.
4. Over time, the relative size of the 2 payment cohorts has naturally changed. For the 2018 year of assessment, 62% of personal taxpayers were PYB taxpayers.<sup>1</sup> They paid 73% of the personal income tax, amounting to around £325 million.

#### Problems with PYB

5. The problems with paying on a PYB are well known. Where taxpayers’ circumstances change and their incomes reduce, it can be difficult to pay a prior-year’s tax bill on a current year’s income. Obvious examples include the following –
  - When a PYB taxpayer loses their job or faces a significant drop in income. In 2020, many Jersey household incomes have been badly affected by the coronavirus pandemic.

---

<sup>1</sup> For the year of assessment 2018, 31,100 individuals (including married couples and civil partners) were classed as PYB taxpayers compared to 19,200 CYB taxpayers. These figures do not include those whose tax liability was nil.

- When people retire and have to pay a full year's PYB liability from (usually significantly lower) pension income.
  - When people move from full-time to part-time working.
  - When an individual leaves Jersey for a jurisdiction where people immediately start paying taxes on a current year basis (such as the UK). They may often be asked to pay 2 year's taxes in one year and may default on the payments due to Jersey.
6. As they approach retirement, some PYB taxpayers do make arrangements to pay more tax each year to pay off (or reduce) their PYB tax liability – so that they do not face a large bill in their first year of retirement. Others' final tax bills are only settled after they have died.

### **Government Plan 2020-23 commitment and fiscal stimulus**

7. With these issues in mind, the Government Plan 2020-23 committed the Treasury to look for options to bring all taxpayers (other than companies) onto a current year basis of payment.
8. As part of the Government's post-pandemic fiscal-stimulus measures (to repair Jersey's economy and restore Islanders' livelihoods) – and also in response to a recent [petition](#) to move all taxpayers to a current year basis – the Minister for Treasury and Resources asked officials to accelerate this work with a view to abolishing PYB for the 2020 year of assessment. This would keep money in the pockets of many current PYB taxpayers in the short term, helping them individually and also serving to help boost the economy. It would, in the longer-term, provide a temporary and significant increase in cash flow for Government as it accelerates the demise of the prior year basis of paying taxes and sees all Islanders shifting to the current year basis.

### **Brief outline of the proposal**

9. The move to CYB would have the following general characteristics –
- PYB taxpayers' 2019 tax liability would be 'suspended'. All PYB taxpayers have a year's tax arrears to settle at some point, either before they retire; during retirement; or, ultimately, from their testamentary estate.
  - Tax liabilities for 2020 would switch to becoming paid on a current year basis. They would be finalised in 2021 following receipt of the 2020 tax return (it will be advantageous to taxpayers to file online in order to expedite this process).
  - For ITIS PYB taxpayers, effective rate notices issued throughout 2021 would disregard the suspended 2019 liability and be based on 2020 income. For individuals whose incomes have reduced in 2020, this is likely to lead to a lower ITIS effective rate for 2021, keeping more money in people's pockets.
  - For non-ITIS taxpayers (mainly self-employed people and pensioners who 'pay on account'), the balancing tax payment required to be paid in November 2020 would be deferred – although payment by those who can afford it will be encouraged in order to reduce future tax bills. The May 2021 payment on account would represent a second payment towards the 2020 liability, and any outstanding balance would be required to be paid by 30th November 2021 (as is currently the case).
  - The suspended 2019 tax liability would be collected according to terms that will be set out in separate Regulations, which will be published before

this proposal is debated (on 3rd November 2020). The Regulations must be made by the States no later than 31st March 2021.

- All taxpayers' 2020 tax liabilities would be finalised in 2021 following receipt of the 2020 tax return. It will be advantageous to taxpayers to file online where they can to accelerate this process.
- In 2021 and future years, non-ITIS taxpayers would make an advance payment (either 40% or 50% of their most recently assessed tax liability<sup>2</sup>) towards their tax bill in November in the year of assessment. A second payment would be required by May in the year following the year of assessment. These taxpayers would still have until 30 November in the year following the year of assessment to ensure their tax is paid in full.
- No individuals would be asked to estimate their tax liability, or to calculate how much they ought to pay. The November payment in the year of assessment would be based on a known assessed figure for the previous year. A final, balancing payment would still, of course, need to be made for self-employed people and employed people with multiple sources of income following the annual tax return in the following year.

### Short-term benefits of moving to CYB

10. Taxpayers who would benefit in the short term include the following –
  - Self-employed people who have faced a down-turn in business during 2020 and who may still be in a recovering position through 2021. Without this proposal, many of these people could be faced with a potentially large 2019 balancing payment in November 2020.
  - Employed people whose income has reduced during 2020 and who may still be in a recovering position through 2021. Their ITIS deductions may now not be paying off their 2019 tax bill so they are accumulating debt to pay off later. A larger tax bill and higher ITIS effective rate in 2021 can be avoided if PYB taxpayers are switched to CYB for the 2020 year of assessment.
  - Pensioners whose pensions are dependent upon returns from the stock market.
11. Suspending the 2019 tax liability and moving from PYB to CYB would in many cases leave more money in people's pockets, where they have experienced a recent reduction in income. Those who have experienced the greatest reduction in income, and/or for the longest period of time, would benefit most from the proposal.

### Potential challenges for taxpayers

12. If, as proposed, the 2019 PYB tax bills are suspended, the Government has already made it clear that PYB taxpayers would, at some point, have to settle those 2019 tax bills – just as PYB taxpayers have always had to do. This does mean that many taxpayers will be being asked to settle in full the 2019 tax bill earlier than they might settle at present (i.e. often at retirement or later).
13. Individuals whose incomes *increased* in 2020 (compared to 2019) would not receive the benefit of reduced ITIS effective rates. In these cases, effective rates issued throughout 2021 would increase in line with their income levels.

<sup>2</sup> Taxpayers with no employment income would make a 50% payment, while taxpayers whose employment income is 25% or less of their total income would make a 40% payment.

14. Since many self-employed individuals have falling incomes, the Government is recognising this and is supporting them by deferring the November 2020 payment. But from 2021 they will be asked to pay more of their taxes on a current year basis with a balancing sum being paid in the following year, after the tax return has been processed.
15. For married people who have a frozen 2019 tax bill, the primary responsibility for repaying this does continue to sit with spouse A – the husband or the older person in a same-sex marriage. It will also sit with spouse A in a civil partnership: this is usually the older civil partner under current law.<sup>3</sup> The Comptroller of Revenue has powers to collect spouse B's proportion of arrears in the event that a marriage or civil partnership breaks down: separating couples nonetheless ought to be mindful of this in reaching settlements in the event of a breakdown in the relationship.

### **Effect on cash flow**

16. It is acknowledged that the proposal, while reducing Treasury cash flow in the shorter term, would effectively accelerate tax payments into the Treasury that might otherwise take longer to collect. PYB taxpayers would experience a shorter-term benefit from the deferral of 2019 taxes but a longer-term cash flow cost from having to pay the 2019 tax bill over a fixed period of time, earlier than they might otherwise pay it. Individuals' views on this proposal are likely to be influenced by the degree to which the shorter-term cash flow benefit they would receive is helpful to them in recovering their financial position, and their desire to remove any financial concern about a tax debt arising on retirement.

### **Longer-term benefits of moving to CYB**

17. In addition to these short-term benefits, the longer-term benefits that would arise from everyone in Jersey paying income tax as they earn income include the following –
  - It makes it easier for people to make the transition from work to retirement; and from full-time work in Jersey to another working arrangement in Jersey or overseas. In the longer run it would make it easier for people to plan for their old age and manage debt through their working lives.
  - Most commonly, people who leave Jersey for the UK would no longer have to settle a PYB tax bill in Jersey while immediately paying as they earn in the UK. This would also help Government reduce the costs associated with managing offshore tax debts.
  - It would prevent CYB employees effectively becoming PYB pensioners when they retire, as they do now. This can mean people pay no tax in their first year of retirement but then can end up with a tax bill to be paid out of their testamentary estate if they do not make arrangements to pay it earlier.
  - It simplifies the tax system, making it easier to understand and for Government to administer.
  - It is fair and more equitable, because everyone is paying off the same year at the same time, and is affected simultaneously by changes to tax legislation (e.g. increases in allowances).

---

<sup>3</sup> Article 42 of the [Income Tax \(Jersey\) Law 1961](#) allows the Comptroller to collect the tax due on spouse B's income (in proportion to spouse B's income) from spouse B if it cannot be collected from spouse A.

- It is more responsive, because adjustments to effective rates can be made more quickly in response to fluctuations in income and to life events (e.g. birth of a child).
- It removes the current anomalies where, for example, a CYB person marries a PYB person, taking on the tax status of 'spouse A' (this would also be addressed by the proposed introduction of independent taxation, where everyone would be taxed individually); and where a CYB employee becomes a PYB pensioner on retirement.
- Everyone pays their Long-Term Care (LTC) contribution on a current year basis. The current discrepancy between PYB income tax and LTC (paid on a current year basis) is often difficult to explain and can be confusing for taxpayers.<sup>4</sup>

### Two-phased approach to implementation

18. The first step – contained in this draft Amendment Law – is to amend the Income Tax Law to reconfigure the payment on account dates and the ITIS effective rate calculations, to suspend the 2019 liability, and to transfer payments made towards 2019 against the 2020 liability. It also allows for the creation of Regulations that would set out the payment terms for the 2019 liability.
19. The second step is to bring forward the Regulations, which would set out the 2019 liability payment terms. The Regulations are required to be made by the States by 31st March 2021.
20. If the main stimulus benefits of this proposal are to be realised, it is vital that the outcomes of the primary law changes are realised as early as possible before 30th November 2020. This will enable –
  - the November 2020 payment deadline to be deferred;
  - sufficient time for Revenue Jersey to re-programme its systems; and
  - effective rates issued in 2021 to be based on the most up-to-date information (and not include 2019 arrears where they occur).
21. Feedback from the public survey (particularly in relation to the payment terms) is still being analysed to inform the proposed Regulations.
22. In order to provide some assurance to States Members about payment options, the Minister is committed to publishing the draft Regulations before the ITL Amendment Law is debated. In addition, the ITL Amendment Law contains a separate safeguard to ensure that a move to CYB does not come into effect without Regulations on the payment of the 2019 liability being passed. The safeguard sets a date by which the Regulations need to be made.

### Survey

23. Islanders were encouraged to complete a survey, which was held between 3rd August 2020 and 2nd September 2020. The survey collected answers to 2 key questions: firstly, whether the ITL Amendment Law should be passed, and secondly whether affected taxpayers should be asked to pay the 2019 liability over a 5 to 10-year period.
24. In total 2,387 participants responded to the survey. Full details of the survey will be published in due course. The headline outcomes are –

---

<sup>4</sup> A separate proposition with regard to the complementary LTC changes is being lodged by the Minister for Social Security.

- There is a 52% majority support for the Amendment in principle, with 38% against (10% were unsure).
- Just under 50% of respondents were against the proposal to pay the 2019 liability over 5 to 10 years. 42% were in favour and 8% were unsure.
- 33% of respondents said they had experienced a reduction in their income in 2020 as a result of the pandemic or other circumstances. 58% said they had not been affected, and 9% preferred not to say.

### Writing off the 2019 liability

25. There have been calls to write-off the 2019 liability, most notably in a second [petition](#). The Minister for Treasury and Resources has reiterated on a number of occasions that this is not appropriate for 2 reasons –
- (a) it would be fundamentally unfair to CYB taxpayers, and to those PYB taxpayers who have caught up to pay on a CYB; and
  - (b) it would be financially irresponsible, especially at a time when Government expenditure has risen to meet the costs of the pandemic. Based on 2018 and historic data, the 2019 liability is estimated to be around £330 million.

### Payment of the 2019 liability

26. This ITL Amendment Law proposes to suspend the 2019 liability and commits the States to make Regulations by 31st March 2021. The payment terms will be brought forward in those Regulations.

### Part 2– The draft Articles

27. *Article 1* provides that the ITL Amendment Law amends the [Income Tax \(Jersey\) Law 1961](#).
28. *Article 2* amends the interpretation of Part 7 of the ITL to clarify that all references to ‘tax’ in that Part are to ‘income tax’.
29. The provisions in Article 41A of the ITL that require the payment of an instalment of income tax (sometimes called a ‘payment on account’) by those individuals who do not pay by ITIS are amended by *Article 3* of the ITL Amendment Law. Individuals would be required to make a payment towards their tax liability by 30th November in the year of assessment (an acceleration by 6 months when compared to the current payment date). The basis of the calculation has not been altered, so it remains 50% of the most recent tax liability (for those with no employment income) or 40% of the most recent tax liability for those whose employment income is 25% or less of their total income.
30. *Article 3* would also introduce a requirement to make a second instalment by 31st May in the year following the assessment. This would be the same as the first instalment, unless the assessment had already been calculated, in which case it would be, if lower, the remaining balance due. The final date for payment (the surcharge deadline) has not been changed, meaning individuals have a further 6 months – until 30th November in the year following the year of assessment – to ensure their tax is paid in full.
31. As is currently the case, individuals will be able to apply to the Comptroller to waive or reduce the instalment, if their income has fallen substantially. In the event the Comptroller refuses to waive or reduce the instalment, the individual has the right of appeal to the independent Commissioners of Appeal.

32. Due to the redrafting of Part 7 of the ITL, *Article 4* re-numbers Article 41AA of the ITL as Article 41AB.
33. *Article 5* re-formats Article 41C of the ITL, which sets out the calculation of the ITIS effective rate. The existing law effectively contains 2 calculations – one for PYB taxpayers and one for CYB taxpayers. The movement of all individuals to CYB means the Article can be simplified.
34. While a new easier-to-understand formula is provided for the ITIS effective rate calculation in Article 41C, the calculation itself remains as it currently is for CYB taxpayers.
35. For ease of interpretation, a number of new Articles relating to the ITIS effective rate are also introduced into the ITL by *Article 5*. The detail of each are as follows –
  - The new Articles 41CA and 41CB are designed to clarify that an ITIS effective rate can be either amended by the Comptroller or at the request of an individual;
  - Article 41CC maintains the requirement for the Comptroller to issue an effective rate notice, while Article 41CD permits an individual to appeal against their effective rate notice and against a refusal by the Comptroller to determine a rate;
  - A new offence is created under Article 41CE, in the event an individual knowingly presents a false or altered notice to their employer; and
  - Article 41CF reiterates the Comptroller is able to take legal action to recover tax arrears, even in the event those arrears are included in an effective rate calculation.
36. *Article 6* of the ITL Amendment Law substitutes the existing Article 41G of the ITL, which provides for the treatment of amounts received by the Comptroller under the ITIS regime. Formerly, the treatment would differ depending on whether the individual was PYB or CYB. The new Article 41G is therefore simplified to recognise only the current year basis of payment, and therefore requires the Comptroller to apply the amounts received to the year of assessment in which the amount is deducted (unless that individual has arrears of tax).
37. The majority of the current Article 41H of the ITL can be repealed, since it is primarily concerned with categorising specified individuals as ‘new taxpayers’ (i.e. CYB taxpayers). However, the requirement for an individual to provide information to the Comptroller when starting work for the first time (or after a period of not working) is retained and reworded by *Article 7*. The information required to be provided is not changed.
38. Schedule 5 (savings, transitional and similar provisions: general) of the ITL is amended by *Article 8* of the ITL Amendment Law. New paragraphs 22 to 25 are inserted into Schedule 5 and cover the following aspects –
  - Paragraph 22 is an interpretation provision;
  - For former PYB taxpayers, paragraph 23 –
    - Defers the 30 November 2020 payment deadline in favour of a new payment deadline to be specified in Regulations;
    - Suspends the 2019 liability;
    - Dis-applies the late payment surcharge in respect of the 2019 liability;

- Provides that the payment terms for the 2019 liability be set out in separate Regulations;
  - Sets a time limit within which those Regulations must be made;
  - Gives sufficient flexibility in the Regulation-making provision for the States to decide the final payment terms; and
  - Confirms the Regulations must not waive or reduce the 2019 liability;
- Paragraph 24 provides for the transfer of payments from the 2019 liability to the 2020 liability; and
  - Paragraph 25 creates a transitional obligation for a person to pay an instalment towards the 2020 liability (the calculations in paragraph 25 are the same as those set out in the revised Article 41A of the ITL). It also permits a person to appeal against the transitional instalment.
39. The Schedule containing the consequential and minor amendments is given effect by *Article 9*.
40. *Article 10* provides the citation and commencement provisions.
41. The *Schedule* to the ITL Amendment Law re-numbers existing Articles in the ITL, aside from –
- Paragraphs 5(2) and (3), which substitute clearer language when setting out which individuals are not within the scope of the late payment surcharge; and
  - Paragraph 7, which makes a consequential amendment to the [Social Security \(Long-Term Care Contributions\) \(Jersey\) Order 2014](#), so that the existing distinction between PYB and CYB taxpayers is removed.

### Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this law. The following statement of financial and manpower implications was included in the *Projet* of the Draft Revenue Administration (Jersey) Law 201-([P.122/2018](#)), lodged *au Greffe* on 23rd October 2018 –

*There are no significant financial or manpower implications for the States arising from the adoption of the draft Law. However, these changes are part of a wider transformation programme that affects fundamentally the way the Taxes Office operates. The resource implications of the wider transformation project are being met from capital allocation and restructuring provisions.*

### Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**APPENDIX TO REPORT****Human Rights Notes on the  
Draft Income Tax (Amendment No. 46) (Jersey) Law 202-**

These Notes have been prepared in respect of the draft Income Tax (Amendment No. 46) (Jersey) Law 202- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law would amend the Income Tax (Jersey) Law 1961 (the “1961 Law”) so that income tax is levied for the current year rather than on the current prior-year basis and provides for limited deferral of 2019 liability.

The draft Law provides the framework under which calculations for income tax instalments can be made and sets out the mechanisms which allow the Comptroller to amend, waive or reduce the amount of payable instalments as necessary. The draft Law, in amending a scheme of taxation provided for in the 1961 Law, has the potential to engage Article 1 of the First Protocol to the ECHR, which provides certain protections for the property of the individual, however the second paragraph to that Protocol provides that the right to property does not in any way impair the right of the State to secure payment of taxes.

Appropriate provision for the purposes of Article 6 ECHR (the right to a fair trial) are made for appeals in relation to the following –

- (i) determinations as to the applicable rate to be applied;
- (ii) the Comptroller’s refusal to determine a rate;
- (iii) decisions as to waivers or reductions to the instalment; and
- (iv) the Comptroller’s refusal to allow payment of 2019 liability over a longer period of time.

In each case, the draft Law and Part 6 of the 1961 Law operate to provide an appeal to the Commissioners and then to the Royal Court, which is sufficient for Article ECHR purposes.



---

## EXPLANATORY NOTE

---

The draft Income Tax (Amendment No. 46) (Jersey) Law 202- (the “Law”) if passed would amend the Income Tax (Jersey) Law 1961 (the “principal Law”). The amendments remove the prior year basis of paying income tax.

*Article 1* provides that the Law amends the principal Law.

*Article 2* amends Article A39 of the principal Law to clarify that references to “tax” in Part 7 of that Law refer to income tax.

*Article 3* replaces Article 41A of the principal Law with new Articles 41A and 41AA.

*New Article 41A* requires certain taxpayers to pay 2 instalments in respect of a year of assessment, rather than the current requirement to pay 1 instalment. The first instalment is to be of the same amount as the instalment required under the current provision. The second instalment is to be the lesser of the first instalment amount and the remaining liability for the year of assessment.

*New Article 41AA* provides for applications for an instalment to be waived or reduced.

*Article 4* renumbers Article 41AA of the principal Law as Article 41AB.

*Article 5* replaces Article 41C of the principal Law with new Articles 41CA to 41CF. The main change is that the rate to be deducted from an employee’s earnings will be based on an estimate of the employee’s tax liability and income for the year to which the rate applies, rather than the previous year. Because of this, there will be no need for a separate ability for the Comptroller to issue provisional rates.

*Article 6* replaces Article 41G of the principal Law. The main change is that the Comptroller must apply deductions of tax from employees’ or sub-contractors’ earnings as payments of income tax for the year in which the deductions were made, rather than to the previous year.

*Article 7* replaces Article 41H of the principal Law. The amended provision no longer contains the requirement that “new taxpayers” pay tax on the current year basis, as that now applies to all taxpayers.

*Article 8* inserts new paragraphs 22 to 25 into Schedule 5 of the principal Law. These provisions provide for taxpayers paying tax on the prior year basis to transition into paying on the current year basis.

*New paragraph 22* defines “2019 liability” and “new taxpayer” for the purposes of new paragraphs 23 to 25.

*New paragraph 23* defers the 2019 liability of a person who is not a new taxpayer. The 2019 liability must be paid in accordance with Regulations to be made under that paragraph.

*New paragraph 24* requires the Comptroller to treat payments that were applied to the 2019 liability of a person that is not a new taxpayer as payments of income tax for the 2020 year of assessment.

*New paragraph 25* requires certain taxpayers to pay an instalment of income tax for the 2020 year of assessment. Because of the deferral of the 2019 liability, the instalment that would have been due on 30th November 2020 for the 2019 liability will not be payable. Under the amended Article 41A, an instalment for the 2020 liability would instead be payable on that date (if the amended Article were in force). Instead, new paragraph 25 requires that an instalment be paid by 31st May 2021 and there is no instalment due on 30th November 2020.

*Article 9* provides that the Schedule contains consequential amendments to give effect to the amendments made by the Law and other minor amendments.

*Article 10* gives the name of the Law and provides that Article 8 comes into force on 16th November 2020 and the rest of the Law comes into force on 1st January 2021.

The *Schedule* contains consequential amendments to reflect and give effect to the amendments made by the Law. As well as amending the principal Law, the Schedule also amends the Social Security (Long-Term Care Contributions) (Jersey) Order 2014.



Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 46) (JERSEY) LAW 202-**

### **Contents**

#### **Article**

1	Amendment of the Income Tax (Jersey) Law 1961 .....	19
2	Article A39 (interpretation of Part 7) substituted .....	19
3	Article 41A (duty to pay instalment in May (individuals and unincorporated bodies)) substituted .....	19
4	Article 41AA (duty to pay instalment (companies)) renumbered .....	22
5	Article 41C (calculation of rate) substituted .....	22
6	Article 41G (treatment of amounts received by Comptroller) substituted .	24
7	Article 41H (arrangements for new taxpayers and certain exempt persons) amended .....	25
8	Schedule 5 (savings, transitional and similar provisions: general) amended .....	26
9	Minor and consequential amendments .....	28
10	Citation and commencement .....	28

#### **SCHEDULE 29**

<b>MINOR AND CONSEQUENTIAL AMENDMENTS</b>		<b>29</b>
1	Article 39 (tax when due) amended .....	29
2	Article 41B (duty of employer to deduct and account for tax) amended ....	29
3	Article 41D (deductions in respect of spouses) amended .....	29
4	Article 41DA (deductions in respect of civil partners) amended .....	29
5	Article 41I (late payment surcharge) amended .....	29
6	Article 42 (proceedings for recovery of tax) amended .....	30
7	Social Security (Long-Term Care Contributions) (Jersey) Order 2014 amended .....	30

#### **ENDNOTES 31**

Table of Endnote References .....	31
-----------------------------------	----





Jersey

## **DRAFT INCOME TAX (AMENDMENT No. 46) (JERSEY) LAW 202-**

**A LAW** to amend the Income Tax (Jersey) Law 1961 to remove the prior-year basis method of paying income tax.

---

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

---

### **1 Amendment of the Income Tax (Jersey) Law 1961**

- (1) This Law amends the Income Tax (Jersey) Law 1961<sup>1</sup>.
- (2) In this Law, a reference to an Article is a reference to that Article in the Income Tax (Jersey) Law 1961.

### **2 Article A39 (interpretation of Part 7) substituted**

For Article A39 there is substituted –

#### **“A39 Interpretation of Part 7**

In this Part –

- (a) expressions defined in Article A15 (interpretation of Part 4) have the same meaning, unless the context requires otherwise; and
- (b) “tax” means income tax.”.

### **3 Article 41A (duty to pay instalment in May (individuals and unincorporated bodies)) substituted**

For Article 41A there is substituted –

**“41A Duty to pay instalments (taxpayers other than companies)**

- (1) A person who is not a company must pay instalments of income tax for a year of assessment beginning on or after 1st January 2021 if –
  - (a) 25% or less of the person’s total income for the year before the year of assessment consists of earnings; and
  - (b) the amount of the instalment payable under paragraph (3) is £100 or more.
- (2) A person who is required to pay instalments of income tax for a year of assessment must pay 2 instalments for the year, which are due and payable as follows –
  - (a) the first instalment is due and payable on 30th November in the year of assessment; and
  - (b) the second instalment is due and payable on 31st May in the year following the year of assessment.
- (3) The amount of a person’s first instalment is calculated as follows –

$$A = (B \times C) - D$$

Where –

- A is the amount of the instalment;
  - B is 0.5 if the person’s income for the year before the year of assessment did not include any earnings, and is 0.4 in any other case;
  - C is the person’s liability to income tax for the year before the year of assessment; and
  - D is the amount of income tax already paid for the year of assessment (not including an amount deducted during the year under Article 41B or 41E).
- (4) If, at the time the second instalment is payable, an income tax assessment has not been made for a person for the year of assessment, the amount of the person’s second instalment is calculated as follows –

$$A = (B \times C) - D$$

Where –

- A is the amount of the instalment;
  - B is 0.5 if the person’s income for the year before the year of assessment did not include any earnings, and is 0.4 in any other case;
  - C is the person’s liability to income tax for the year before the year of assessment; and
  - D is the amount of income tax already paid for the year of assessment (not including an amount deducted during the year under Article 41B or 41E and the amount paid for the first instalment).
- (5) If, at the time the second instalment is payable, an income tax assessment has been made for a person for the year of assessment, the amount of the person’s second instalment is the lower of –

- (a) the person's remaining income tax liability for the year of assessment; and
  - (b) the amount calculated using the formula in paragraph (4).
- (6) This Article applies regardless of whether, at the time an instalment is due and payable, an assessment has been made for the year of assessment or any prior year.
- (7) This Article does not apply in respect of tax charged under Part 19 on a scheme manager of an approved Jersey scheme, an approved drawdown contract or an approved trust (as defined in Article 130).

#### **41AA Applications to waive or reduce amount of instalment**

- (1) A person may apply to the Comptroller to waive or reduce the amount of an instalment payable under Article 41A that is due one month or more after the date the Comptroller receives the application if –
- (a) the person's income tax liability for the year of assessment is likely to be substantially less than the sum of the instalments payable for the year; or
  - (b) the person's income for the year of assessment from sources other than earnings is likely to be substantially less than the person's income for the previous year from those sources.
- (2) The Comptroller may accept an application that is received less than a month before the date the instalment is payable if the Comptroller is satisfied that the applicant was not able to apply at an earlier time due to absence, sickness or another reasonable cause.
- (3) On receipt of an application, –
- (a) the Comptroller may waive or reduce the amount of the instalment; and
  - (b) the Comptroller must notify the applicant of the outcome of their application.
- (4) If the Comptroller refuses to accept a late application or to waive or reduce the amount of an instalment payable by a person, –
- (a) the person may appeal the refusal to the Commissioners by giving notice in writing to the Comptroller within 40 days of the date on which the notice of refusal is issued; but
  - (b) the instalment remains due and payable by the date specified in Article 41A(2).
- (5) If the Commissioners conclude that the instalment should be waived or reduced, the Comptroller must repay any amount determined to have been overpaid.
- (6) Part 6 applies, with the necessary modifications, to an appeal under this Article as if it were an appeal against an assessment.”.

#### 4 Article 41AA (duty to pay instalment (companies)) renumbered

Article 41AA (duty to pay instalment (companies)) is renumbered as Article 41AB.

#### 5 Article 41C (calculation of rate) substituted

For Article 41C there is substituted –

##### “41C Calculation of rate

- (1) The rate applicable to an employee for a year is the lower of –
  - (a) the rate calculated using the formula in paragraph (2), rounded up to the nearest whole number; and
  - (b) the maximum rate for the employee in paragraph (3).
- (2) The formula to calculate an employee’s rate is –

$$A = \frac{B + C - D}{E} \times 100$$

Where –

- A is the rate;
  - B is the employee’s estimated liability to income tax for the year to which the rate applies;
  - C is the employee’s total arrears of income tax (if any) for any earlier year of assessment (whether or not judgment has been obtained in respect of the arrears) and any costs recoverable in respect of those arrears;
  - D is the amount of income tax already paid for the year to which the rate applies (not including any amount deducted during the year under Article 41B or 41E); and
  - E is the estimated sum, for the year to which the rate applies, of the amount of income for which the employee is liable to be assessed and the amount of income from which the employee is liable to allow the deduction of tax.
- (3) The maximum rate for an employee is –
    - (a) 20%, if the employee has no arrears of income tax;
    - (b) 25%, if the employee has arrears of income tax for one year of assessment;
    - (c) 30%, if the employee has arrears of income tax for 2 years of assessment; and
    - (d) 35%, if the employee has arrears of income tax for 3 or more years of assessment.

##### 41CA Revised rates: initiated by Comptroller

- (1) If one or more of the variables used to calculate an employee’s rate changes, the Comptroller may determine a revised rate for the employee by applying Article 41C using the new variables.

- (2) If the Comptroller considers that the revised rate determined under paragraph (1) will not recover the employee's income tax liability (including arrears for previous years) by the end of the year to which the rate applies, the Comptroller may determine a revised rate that is the lower of –
- (a) the rate calculated using the formula in paragraph (3), rounded up to the nearest whole number; and
  - (b) the maximum rate for the employee in Article 41C(3).
- (3) The formula for calculating a revised rate in the circumstances described in paragraph (2) is –

$$A = \frac{B + C - D}{E} \times 100$$

Where –

- A is the revised rate;
- B is the amount of the employee's estimated liability to income tax for the year to which the rate applies;
- C is the employee's total arrears of income tax (if any) for any earlier year of assessment (whether or not judgment has been obtained in respect of the arrears) and any costs recoverable in respect of those arrears;
- D is the amount of income tax already paid for the year to which the rate applies, including any amount deducted during the year under Article 41B or 41E; and
- E is the estimated sum, for the remainder of the year to which the rate applies, of the amount of income for which the employee is liable to be assessed and the amount of income from which the employee is liable to allow the deduction of tax.

#### **41CB Revised rates: initiated by employee**

- (1) An employee may request that the Comptroller determine a revised rate for the employee that is higher than the rate determined under Article 41C or 41CA.
- (2) The Comptroller may approve or refuse a request.

#### **41CC Notification of rate**

- (1) After determining the rate applicable to an employee (including a revised rate), the Comptroller may issue a notice in writing to the employee and the employee's employer that states the rate and the day from which it applies.
- (2) A notice issued by the Comptroller has effect until the earlier of –
  - (a) the day stated in the notice;
  - (b) the day on which a rate specified in a further notice applies; or
  - (c) the end of the year to which the rate applies.

**41CD Appeals against rates decisions**

- (1) An employee may appeal to the Commissioners against a rate determined to apply to the employee by giving notice in writing to the Comptroller within 40 days of the date on which the notice of the rate is issued to the employee.
- (2) An employee may appeal against a refusal by the Comptroller to determine a rate to apply to the employee by giving notice in writing to the Comptroller within 40 days of providing the Comptroller with sufficient information to determine a rate.
- (3) The rate that applies to the employee before the employee gives notice of an appeal (whether it is the rate determined by the Comptroller or the rate applicable under Article 41B(2)(b)) continues to apply until the appeal is determined.
- (4) Part 6 applies, with the necessary modifications, to an appeal under this Article as if it were an appeal against an assessment.

**41CE False and altered rate notices**

- (1) A person must not give another person –
  - (a) a document purporting to be a notice issued by the Comptroller under Article 41CC, knowing it to be false; or
  - (b) a notice issued by the Comptroller under Article 41CC, knowing that the notice has been altered by a person other than the Comptroller.
- (2) A person who breaches this Article commits an offence and is liable to a fine.

**41CF Rates do not prevent recovery of arrears**

The Comptroller may continue to pursue the recovery of arrears of income tax for an earlier year of assessment and any costs recoverable in respect of those arrears, regardless of whether those amounts are used in determining a rate to apply to an employee.”.

**6 Article 41G (treatment of amounts received by Comptroller) substituted**

For Article 41G there is substituted –

**“41G Treatment of amounts received by Comptroller**

- (1) The Comptroller must apply an amount deducted and remitted under Article 41B or 41E –
  - (a) as a payment of income tax by the employee or sub-contractor from whom it was deducted; or
  - (b) if the employee or sub-contractor from whom it was deducted is a spouse B to whom Article 121(1) (general rule as to income tax on married persons) applies or a civil partner B to

whom Article 122B(1) (general rule as to income tax on civil partners) applies, as a payment of income tax by the employee's or sub-contractor's spouse A or civil partner A.

- (2) The Comptroller must apply the amount to the year of assessment in which it was deducted (the "deduction year") unless paragraph (3) or (4) applies.
- (3) If the amount was deducted from an employee whose effective rate accounts for the recovery of arrears of income tax or costs recoverable with them, the Comptroller must apportion the amount between the employee's liability to income tax for the deduction year and the employee's liability to pay the arrears or costs (the apportionment must reflect the proportion each liability makes up of the total liability).
- (4) If the amount was deducted from a sub-contractor who has arrears of income tax from a previous year of assessment or costs recoverable with those arrears, –
  - (a) the Comptroller must apply any amount received that exceeds the sub-contractor's liability to income tax in the deduction year as a payment of the arrears or costs; and
  - (b) if the arrears or costs are from more than one previous year of assessment, the Comptroller must apply the excess to the earliest year of assessment first."

## 7 Article 41H (arrangements for new taxpayers and certain exempt persons) amended

For Article 41H there is substituted –

### "41H Requirement to provide information when entering or resuming employment or sub-contracting

- (1) This Article applies to a person who –
  - (a) begins employment in Jersey for the first time or after being non-resident in Jersey for at least one year of assessment; or
  - (b) enters into a contract as a sub-contractor of a building contractor in Jersey for the first time or after being non-resident in Jersey for at least one year of assessment.
- (2) The person must, no later than one month after beginning or resuming the employment or entering into or resuming the contract, notify the Comptroller in writing of –
  - (a) the person's full name and place or places of residence;
  - (b) the reference number assigned to the person for the purposes of the Social Security (Jersey) Law 1974<sup>2</sup>;
  - (c) the person's date of birth;
  - (d) the number of children dependent on the person;
  - (e) the date (if any) the person arrived in Jersey;
  - (f) the name and address of –

- (i) if the person is an employee, the person's employer, or
    - (ii) if the person is a sub-contractor of a building contractor, the building contractor;
  - (g) the date the employment or building contract began;
  - (h) an estimate, for the year in which the employment or contract began, of the person's –
    - (i) earnings from the employment or payments under the building contract, and
    - (ii) income from all other sources.
- (3) If the person is married or in a civil partnership, the person must also notify the Comptroller of –
  - (a) the date of the marriage or formation of the civil partnership;
  - (b) which spouse or civil partner is spouse A or civil partner A and which spouse or civil partner is spouse B or civil partner B; and
  - (c) the information required by paragraph (2) in respect of their spouse or civil partner.
- (4) The Comptroller may –
  - (a) require the information to be provided in a form, and in a manner, approved by the Comptroller; and
  - (b) require the person providing the information to sign a declaration that the information is true, complete and correct to the best of the person's knowledge.”.

## **8 Schedule 5 (savings, transitional and similar provisions: general) amended**

In Schedule 5, after paragraph 21 there is inserted –

### **“22 Interpretation of paragraphs 23 to 25**

In paragraphs 23 to 25 –

“2019 liability” means the amount of income tax assessed (or to be assessed) for the year beginning 1st January 2019;

“new taxpayer” means a person –

- (a) to whom Article 41H (as in force before amended by Income Tax (Amendment No. 46) (Jersey) Law 202-<sup>3</sup>) applied for the year beginning 1st January 2019; or
- (b) who chose to be treated as if Article 41H applied to them for the year beginning 1st January 2019.

### **23 Income Tax (Amendment No. 46) (Jersey) Law 202-: deferral of 2019 liability**

- (1) The 2019 liability for a person who is not a new taxpayer –

- (a) is not due and payable by the dates set out in Articles 39, 41A and 41AA; but
  - (b) will become due and payable as specified in Regulations made under this paragraph.
- (2) Article 41I does not apply in relation to the 2019 liability for a person who is not a new taxpayer.
- (3) The States must, no later than 31st March 2021, make Regulations that –
- (a) provide for the payment of the 2019 liability;
  - (b) provide for any other matter that the States consider necessary to provide for the payment of the 2019 liability.
- (4) Regulations made under this paragraph may –
- (a) provide for recovery of the 2019 liability –
    - (i) from a person who becomes non-resident before their 2019 liability is paid in full, and
    - (ii) from the estate of a person who dies before their 2019 liability is paid in full; and
  - (b) allow the Comptroller to vary the payment dates that apply to a person on application from the person.
- (5) Regulations made under this paragraph must not waive, or reduce the amount of, a person's 2019 liability.

#### **24 Income Tax (Amendment No. 46) (Jersey) Law 202-: transfer of payments from 2019 to 2020**

- (1) This paragraph applies to a payment if –
- (a) the payment was made before 1st January 2021;
  - (b) the payment was not received as a payment by a new taxpayer; and
  - (c) the payment was applied to the 2019 liability or to any penalties or surcharges in respect of the 2019 year of assessment.
- (2) The Comptroller must treat a payment to which this paragraph applies as a payment of income tax for the 2020 year of assessment.

#### **25 Income Tax (Amendment No. 46) (Jersey) Law 202-: payment of instalment for 2020**

- (1) A person must pay an instalment of income tax for the 2020 year of assessment ("2020") if –
- (a) the person is not a company;
  - (b) 25% or less of the person's total income for the 2019 year of assessment consists of earnings; and
  - (c) the amount of an instalment payable under this paragraph is £100 or more.

- (2) The instalment of income tax for 2020 is due and payable on 31st May 2021.
- (3) If, at 31st May 2021, an income tax assessment has not been made for the person for the 2020 year of assessment, the amount of the person's instalment is calculated as follows –

$$A = (B \times C) - D$$

Where –

- A is the amount of the instalment;
  - B is 0.5 if the person's income for 2019 did not include any earnings, and is 0.4 in any other case;
  - C is the person's 2019 liability; and
  - D is the amount of income tax already paid for 2020 (not including an amount deducted during the year under Article 41B or 41E).
- (4) If, at 31st May 2021, an income tax assessment has been made for a person for the 2020 year of assessment, the amount of the person's instalment is the lower of –
    - (a) the person's remaining income tax liability for the 2020 year of assessment; and
    - (b) the amount calculated using the formula in sub-paragraph (3).
  - (5) This paragraph does not apply in respect of tax charged under Part 19 on a scheme manager of an approved Jersey scheme, an approved drawdown contract or an approved trust (as defined in Article 130).
  - (6) In this paragraph, "earnings" has the meaning given in Article A15.
  - (7) Article 41AA applies, with necessary modifications, to the waiver or reduction of amount of an instalment payable under this paragraph."

## 9 Minor and consequential amendments

The Schedule contains consequential amendments to give effect to the amendments made by this Law and other minor amendments.

## 10 Citation and commencement

- (1) This Law may be cited as the Income Tax (Amendment No. 46) (Jersey) Law 202-.
- (2) Article 8 comes into force on 16th November 2020.
- (3) The remainder of this Law comes into force on 1st January 2021.

**SCHEDULE**

(Article 15)

**MINOR AND CONSEQUENTIAL AMENDMENTS****1 Article 39 (tax when due) amended**

- (1) In Article 39 for “Article 41A and 41AA” there is substituted “Article 41A and 41AB”.
- (2) In Article 39(b) for “Article 41AA(7)” there is substituted “Article 41AB(7)”.

**2 Article 41B (duty of employer to deduct and account for tax) amended**

In Article 41B(2)(a) for “Article 41C” there is substituted “Article 41CC”.

**3 Article 41D (deductions in respect of spouses) amended**

- (1) In Article 41D(1)(a) for “Article 41C(2)” there is substituted “Article 41C, 41CA or 41CB”.
- (2) In Article 41D(1)(b) for “Article 41C” there is substituted “Article 41CC”.
- (3) For Article 41D(3A) there is substituted –  
“(3A) Article 41CD applies to a refusal by the Comptroller to issue a notice under paragraph (3) of this Article as it applies to a refusal to determine a rate to apply to an employee.”.
- (4) In Article 41D(5)(c) for “Article 41C” there is substituted “Article 41CC”.

**4 Article 41DA (deductions in respect of civil partners) amended**

- (1) In Article 41DA(1)(a) for “Article 41C(2)” there is substituted “Article 41C”.
- (2) In Article 41DA(1)(b) for “Article 41C” there is substituted “Article 41CC”.
- (3) For Article 41DA(3A) there is substituted –  
“(3A) Article 41CD applies to a refusal by the Comptroller to issue a notice under paragraph (3) of this Article as it applies to a refusal to determine a rate to apply to an employee.”.
- (4) In Article 41DA(5)(c) for “Article 41C” there is substituted “Article 41CC”.

**5 Article 41I (late payment surcharge) amended**

- (1) In Article 41I(1)(b) for “Article 41AA(7)” there is substituted “Article 41AB(7)”.
- (2) For Article 41(3) there is substituted –

“(3) Paragraph (2) does not apply in respect of a person who is required to pay an instalment under Article 41A (Duty to pay instalments (taxpayers other than companies)) if –

- (a) the person’s income for the year before the year of assessment to which the instalment relates included earnings; and
- (b) the person has paid 70% or more of the required instalment by the specified date.

(3) For Article 41I(10) there is substituted –

“(10) This Article does not apply in relation to an individual person if more than 25% of the person’s total income for the year before the year of assessment consists of earnings.”.

## **6 Article 42 (proceedings for recovery of tax) amended**

In Article 42(1AA) for “Article 41AA” there is substituted “Article 41AB”.

## **7 Social Security (Long-Term Care Contributions) (Jersey) Order 2014 amended**

For paragraph 1 of the Social Security (Long-Term Care Contributions) (Jersey) Order 2014<sup>4</sup> there is substituted –

### **“1 Exception from liability to pay LTC contribution for non-taxpayer**

An insured person is not liable to pay an LTC contribution for a year if the person is not liable to pay income tax for that year.”.

## ENDNOTES

### Table of Endnote References

---

<a href="#">1</a>	<i>chapter 24.750</i>
<a href="#">2</a>	<i>chapter 26.900</i>
<a href="#">3</a>	<i>P.118/2020</i>
<a href="#">4</a>	<i>chapter 26.900.41</i>