

STATES OF JERSEY



REMOVAL OF COMPULSORY INDEPENDENT TAXATION FOR EXISTING MARRIED COUPLES AND CIVIL PARTNERSHIPS (P.32/2023) : COMMENTS

Presented to the States on 30th June 2023
by the Minister for Treasury and Resources

STATES GREFFE

COMMENTS

The Main Proposition and First Amendment

The Minister has lodged draft legislation to deliver mandatory Independent Taxation for debate on 18 July 2023 in accordance with earlier statements ([P.41/2023](#)).

The decision to propose to the Assembly that Independent Taxation should be mandatory will deliver on public commitments to provide equality across genders and ages (in same-sex marriages and civil partnerships) – and between co-habiting and married people – through a policy that has been developed carefully, over several years, by consecutive Ministers and in response to Islanders’ preferences.

For the reasons cited below, the Minister asks States Members to reject:

- the proposition, which seeks to keep a voluntary element for some (but not all) couples;
- the amendment lodged by Deputy Farnham, which intends to modernise Married Man’s Taxation; and
- the amendment, lodged by Deputy Alves, which would create optionality for couples who are currently taxed independently.

Consequences of adopting the proposition

If Deputy Farnham’s proposition was successful, it is inevitable that the draft law to deliver Independent Taxation ([P.41/2023](#)) would need to be withdrawn.

Replacement legislation – for example, to provide for voluntary adoption of Independent Taxation in future – will take some time to develop and would almost certainly need to omit the currently proposed compensatory allowance (and various other changes) to help keep the resulting parallel tax regimes as simple as possible to understand and to operate.¹ Couples who would be negatively financially affected in Independent Taxation would then be free to remain in the existing regime.

Keeping a voluntary element would present a difficult choice for affected married couples (i.e., those resident in Jersey and married before 2022). Couples who make a financially disadvantageous decision could in extreme cases pay over £3,000 additional tax, each year. In some cases, this might happen because of an unforeseen change in circumstances (e.g. redundancy) which the compensatory allowance would have prevented.²

In addition, letting couples choose whether to be taxed independently would create discrimination between couples based on income. It would be mainly higher-earning couples who would elect for Independent Taxation (because they would benefit financially); lower-earning couples would largely remain in married taxation because of the potential impact on their household finances.

The difference in treatment between married and unmarried couples would drag on.

¹ Parallel tax regimes are best avoided in the interests of cost-effective Government and having a tax system that is easy to understand and explain. See Appendix 2 for further details.

² For the reasons given in this report, the compensatory allowance cannot operate alongside a voluntary regime. It would be unfeasible and prohibitively expensive to operate multiple personal tax regimes in parallel.

Jersey Does Not Have “Joint Taxation”

It is incorrect to suggest that Jersey has joint taxation: it doesn't. We continue to operate the so-called Married Man's Taxation which was introduced in 1928. (This corresponded with UK practice in 1928 which the UK abolished around 1990.)

Our tax law, for those married and resident before 2022, still treats the income of wives as belonging to their husbands. Spouse A, being the husband in opposite-sex marriages (and the older person in all same-sex marriages and most civil partnerships), has the legal responsibility for the tax affairs of the couple. The income of spouse B is deemed to be that of spouse A, and spouse B has no legal responsibility for the payment of the tax liability or for filing the return.

Consequently, Deputy Farnham's amendment to his proposition essentially asks the Minister for Treasury and Resources to introduce a modern form of joint taxation for those married and resident before 2022 who choose not to move into Independent Taxation if the move is not made mandatory.

This would introduce further complexity and it is unlikely such modernisation could be achieved without significant overhaul of our Revenue Management System at considerable cost. It would be challenging to operate a system requiring joint signatures, particularly in an e-filing environment with digital IDs. And the Deputy's amendment does not seem to call for joint and several liability for tax debts – an obvious feature of a modernised regime of joint taxation.

Extensive consultation

It should be noted that the last Government did investigate the case for creating a modernised form of Married Couples Taxation but eventually ruled it out as impractical and unnecessary. Instead, it was decided to introduce Independent Taxation for all Islanders (with compensatory measures) – a position reflecting majority views in surveys and ultimately supported by the Assembly.

Appendix 1 outlines the comprehensive and meaningful consultation undertaken prior to lodging previous propositions. Respondents favoured Independent Taxation above any alternative. They also preferred a simpler tax system overall, which would be delivered by Independent Taxation.

It is more probable, were Deputy Farnham's proposition to succeed, that Married Man's Taxation (and its “separate assessment” facility allowing spouse B some oversight of their own tax affairs) would need to be grandfathered as it stands – albeit the grandfathering period could last many decades.

Building solid foundations

Deputy Farnham's proposal is, of course, superficially attractive when faced with a choice between mandatory or optional approaches. It does not represent a sensible approach to a national tax regime; just as it could not have worked when Jersey was faced with decimalisation in 1971.

Ultimately it would mean Jersey would be running two separate tax regimes side-by-side for possibly around 60 years. The youngest married couples subject to married couples' taxation are in their 20s, so it is not unreasonable to expect another 60 years of managing two systems and handling the additional work (customer enquiries etc) that will inevitably arise.

Not only would this defeat the objective of removing sex and age discrimination (as well as discrimination on the basis of marital status) from the tax system, but it would also provide poor foundations for the future development of Jersey's personal tax regime. It would add complexity both for Islanders; for our software providers; and our revenue officers, rather than move closer towards simplicity. This added complexity will have the consequence of considerable additional cost.

Ministers have sought to learn lessons from the experience of running previous and current year payment bases of tax payment (PYB and CYB). For many years, Revenue Jersey was running these systems in parallel, causing additional workloads and heavily increasing customer service demands. Mandatory Independent Taxation would not only remove complexity, but increase the ability to improve the tax system and provide better customer service.

Jersey-specific customisations, such as married taxation, have led to ongoing additional costs to maintain the tax system. Simplification would reduce costs, but more crucially would increase the capacity for Revenue Jersey to do more: offering better and targeted customer service for those groups who need it and providing new services faster.

“Low take up”

Deputy Farnham refers to a “low take up” that, he asserts, demonstrates that mandatory Independent Taxation is unwelcome.

Initially, for the 2022 year of assessment, the choice of election for Independent Taxation was deliberately restricted to a limited number of couples (around 650 married couples) who had historically elected to be ‘separately assessed’. This enabled Revenue Jersey to use a ‘pilot group’ of several hundred couples to test the robustness of the systems being developed to deliver Independent Taxation. Elections for the 2023 year of assessment were more widely available but with clear warnings provided as to the risks of opting for Independent Taxation before the proposed compensatory allowance was made available (from 2025). Elections are irrevocable.

Since the maximum possible pilot group was not much more than 1,000 in 2022, and without the compensatory allowance being available until 2025, it was expected – and is unsurprising – that hundreds (rather than thousands) of couples have elected because:

- Most couples would be financially unaffected by the move and have been advised to wait;
- Around seven thousand couples would pay more tax (the compensatory allowance would not come into force until the 2025 year of assessment); and
- Those who can be absolutely confident that they would be paying less tax are limited in number (and could still be worse off if their circumstances were to change).

Some couples who have made elections have been informed subsequently by Revenue Jersey that their election was likely to mean they would pay more tax. With this information, some (but not all) couples have chosen not to proceed with their election. Contrary to the assertion made in the Proposition, it would appear that there is an appetite for change, even in some cases where the couple is paying more tax because of moving early to independent taxation.

Many couples are already taxed independently

Deputy Farnham's proposition does not appear to offer couples who are already taxed independently the opportunity to re-consider their options. Many of those who have voluntarily adopted Independent Taxation would have made that decision on the basis that Independent Taxation would become mandatory, at which point the Compensatory Allowance would be made available for those who need it.

In the Minister's view, careful consideration would need to be given to the position of those couples, including whether to offer a return to married taxation.

Extra support for taxpayers

Deputy Farnham has raised valid concerns about the unsettling effect these changes may have on some couples. The same concerns have been raised at the Personal Tax Community Helpdesk events, which have taken place in Parish Halls and other locations across the Island since September 2022.

Revenue Jersey officers have looked at the data to help understand how those challenges can be addressed. In reality it is likely that married couples and civil partners will 'divide their labour' on the task of filing tax returns as most people do now with most household tasks.

Although Independent Taxation would increase the number of tax returns filed each year, the data shows that there are many pensioner couples in the income tax system where one of the spouse's/partner's income is consistently below the current personal tax threshold.

Work will be undertaken to remove these people entirely from the requirement to file before Independent Taxation is made mandatory. That exercise would leave a smaller group of inexperienced filers to whom additional customer support will be provided, if it is required. The support would build on the more user-friendly online facilities and on the Parish Hall events. Face-to-face appointments will be provided if requested by an individual.

As indicated above, Revenue Jersey has regular experience in handling inexperienced filers, in the unfortunate circumstance of the death of a husband or older civil partner, for example. Newly widowed customers are asked to file a tax return, so this scenario is not unique to Independent Taxation, although the timing and scale will be different.

Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW)

Mandatory Independent Taxation will help the Government of Jersey in its effort to further align itself with the international standards and recommendations set out by the Committee of the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) following extension of the CEDAW Convention to Jersey in February 2021.

There are still parts of Jersey's legislation that discriminate against women: in the areas of inheritance, domestic domicile, and taxation. Amending the Island's legislation to remove this discrimination is a priority and will also allow Jersey to request the removal of several reservations that it has in place for CEDAW.

The Second Amendment

This amendment seeks to allow couples who are subject to mandatory Independent Taxation (and have been so since 1 January 2022) to have the option to access the Married Man's Threshold instead of the Single Person's threshold. This effectively undoes the decision of the last Assembly to make Independent Taxation mandatory for everyone who married from 1 January 2022 and married couples who came to Jersey from that date.

If the Proposition and both amendments were accepted, then Jersey would have a grandfathered scheme for everyone married and resident before 2022 (essentially Married Man's Taxation but with a call to modernise that into a form of Joint Taxation) and a compulsory scheme of Independent Taxation for any resident married – or anyone married and becoming resident – from 1 January 2022 but with the right to choose the tax allowance that best suits them. This would be broadly akin to the existing form of Separate Assessment (within Married Man's Taxation) but would need industrialisation for the numbers involved.

Among the administrative complexities that this amendment would introduce would be the need to understand the incomes of both spouses and (where necessary) match two (Independent taxation) tax returns. Creating optionality over tax allowances would be technically complex to achieve in our revenue systems and complicated to administer and to explain to the Public.

It would, in all probability, take several years to devise systems to accommodate this amendment and effectively does reject in its entirety the concept of Independent Taxation, maintaining discrimination between married and unmarried couples.

If the main proposition and the two amendments were adopted, Jersey would have a tax system with an endless two-way street between:

- Couples who are subject to married taxation who could elect to be taxed independently, and
- Couples who are taxed independently who could choose to access the married man's threshold.

This would severely undermine the principle of Independent Taxation by continuing to treat married couples differently to unmarried couples (Deputy Alves' amendment offers the option of a higher threshold only to married couples, perpetuating inequality in treatment based on marital status). It defies the long-held policy of keeping our tax system as simple and as fair as possible. In short, this amendment would effectively reverse the States' decision to adopt [P.78/2021](#) and would add layer upon layer of complexity and uncertainty into the tax system, making it unworkable and extremely difficult to understand or administer. The complexities and costs of running parallel systems, as outlined in Appendix 2, would further increase.

Conclusion

The Minister asks States Members to reject the proposition and the amendments.

Appendix 1 – Summary of consultation and engagement undertaken with Islanders on Independent Taxation

Date	Type of engagement	Participants
October 2017	Apptivism Facebook messenger chatbot on the current system of married taxation	1,200 participants
February 2018	<i>4Insight</i> 1st series of focus groups discussing married and unmarried taxation	32 participants, in-depth interviews
June 2018	Statistics Jersey issued the Jersey Opinions and Lifestyle Survey, which included questions on married taxation	>1,000 responses
June 2018	<i>4Insight</i> 2nd series of focus groups, discussing different elements of the personal tax regime – including tax reliefs and allowances, and tax rates	32 participants, in-depth interviews
Jan-Mar 2019	<i>ComRes</i> online and telephone survey covering married taxation, tax reliefs and allowances, and tax rates	c.3,000 responses
<p>A majority of participants in the engagement that took place between October 2017 and March 2019 thought it was unreasonable to treat married and unmarried couples differently, with independent taxation being preferred to alternatives, such as household taxation.</p> <p>That engagement informed the policy direction that resulted in the lodging of P.119/2019 and P.78/2021 – the first stage of the movement to independent taxation.</p> <p>The engagement below took place after the States adopted P.78/2021.</p>		
Date	Type of engagement	
September 2021	Media release – States adopt first stage of law	
September 2021	Publication of dedicated page on Government website	
From September 2021	Leaflet delivered to all households in Jersey	
	Posters in all Parish Halls, the Town Library and Citizens Advice (including in Polish and Portuguese)	
	Social media campaigns <ul style="list-style-type: none"> • “More information is available” • “Use our online tax calculator” 	

	<ul style="list-style-type: none"> • “Attend our public briefing events”
	“Event reminders”
	Advertising in JEP and Bailiwick Express (“See how the tax you pay may change”)
	JEP advertising – “use our online tax calculator” and “attend one of our public brief events” campaigns
	Public events – St Helier (x2), St John, St Brelade, and St Clement
	Published online tax calculator
	Online webinar for pilot group participants
	Change guide for pilot group participants
November 2021	Facebook Livestream Event
From January 2022	Leaflet included with all income tax returns
June 2022	Pilot group – feedback survey
From January 2023	Leaflet included with all income tax returns

Appendix 2 – The impact of running parallel systems

Allowing married couples' taxation to continue, as set out in Deputy Farnham's original proposition, would require relatively little up-front system development work, as some of that work has already been completed to allow existing couples to opt-in to Independent Taxation in the years of assessment 2022 and 2023.

However, the real costs of running two systems in parallel would come further down the line.

- Two separate Personal Tax regimes would need to be maintained in our IT systems creating complexity and increasing risks of software failures. Every system update (approx. four per year) would require twice the amount of resource in the testing team, not to mention at least double the supplier development costs.
- Revenue Jersey officers would need to be trained on the two regimes for the foreseeable future.
- All communications issued by Revenue Jersey to the Public would need at least two versions, or each communication would need to be caveated to explain that some rules applied only to discrete groups of taxpayers. (Revenue Jersey has recent experience of how unclear messaging around the dual running of "PYB" and "CYB" increases call volumes and footfall, diverting officers from core assessing and compliance work.)
- Maintaining a Jersey-specific add-on element to the more usual (worldwide) personal taxation rules would significantly limit options and increase costs when the existing tax system needs to be upgraded or replaced in future years. (The current IT contract expires in autumn 2024.)
- It may also cause unnecessary complexity as we seek to move to more digital Government, with each person having their own digital identity for the purpose of accessing Government services. On the other hand, the move to mandatory Independent Taxation would help ensure that the forthcoming online tax accounts can adhere to data protection rules.
- Were married couples' taxation system allowed to continue in some form, it is highly unlikely that the proposed Compensatory Allowance could be implemented as currently envisaged (due to technical complexity of running it in restricted circumstances), meaning that Independent Taxation (for islanders married before 2022) would only be feasible if affordable for the couple. Additionally, it would probably be necessary for couples remaining in joint taxation to continue to accept the current statutory position that income is declared through "Spouse A" (the husband or older person in a same-sex marriage or civil partnership). Earlier work in 2019 to determine whether it was feasible to modernise Married Couples' Taxation argued against reformation in favour of mandating Independent Taxation. If married taxation remains available Revenue Jersey does not believe it would be feasible for "Spouses B" to be given the option to file the tax return.

