

STATES OF JERSEY



DRAFT REVENUE ADMINISTRATION (JERSEY) LAW (S.R.3/2019): RESPONSE OF THE MINISTER FOR TREASURY AND RESOURCES

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

STATES GREFFE

**DRAFT REVENUE ADMINISTRATION (JERSEY) LAW (S.R.3/2019):
RESPONSE OF THE MINISTER FOR TREASURY AND RESOURCES**

Ministerial Response to:	S.R.3/2019
Ministerial Response required by:	5th April 2019
Review title:	Draft Revenue Administration (Jersey) Law
Scrutiny Panel:	Corporate Services Scrutiny Panel

INTRODUCTION

The Draft Revenue Administration (Jersey) Law 201- ([P.122/2018](#)) (the “draft Law”) is a standalone piece of legislation which forms a key part of the revenue transformation programme (the “RTP”). The draft Law, lodged on 23rd October 2018, represents the first tranche of the RTP: the Minister expects to bring the second tranche before the States Assembly alongside the Government Plan later in 2019. These 2 tranches will together form the majority of the RTP, although it is expected that it will be amended from time to time.

The Corporate Services Scrutiny Panel’s Report ([S.R.3/2019](#)) has made a number of findings and recommendations, to which the Minister has responded in detail below.

The report resulted in the Panel’s lodging of 4 amendments within [P.122/2018 Amd.](#) In advance of the debate date (on 26th February 2019), the Minister presented comments to the States ([P.122/2018 Amd.Com.](#)), confirming that she had accepted 3 of those amendments, which transferred the setting of interest rates from Ministerial Order to Regulations (requiring States Assembly approval). The fourth amendment concerned a perceived lack of safeguards relating to a power conferred on the Comptroller to require a taxpayer to produce documents when they had previously refused to do so on request. Given that other information production powers of this nature are planned to be included in the second tranche of the RTP, [the Minister confirmed to the Assembly that she would not propose the relevant Article](#) of the draft Law in the debate.

While the Minister is disappointed that the draft Law was referred back to her under Standing Order 83, she is pleased to have the opportunity to provide clarification to States Members on a number of issues (some of which extend beyond the scope of the draft Law) and, having engaged further with both the Corporate Services Scrutiny Panel and Deputy M. Tadier of St. Brelade (as the Member who proposed the reference back), she will be presenting to the States an addendum to the original report from [P.122/2018](#), addressing the questions that have been raised.

FINDINGS

	Findings	Comments
1	<p>Stakeholders agreed that Jersey’s current tax law is no longer fit for purpose, and that the draft law reforms the administrative elements. Article 2 of the draft Law establishes a Comptroller of Revenue in place of the existing Comptroller of Taxes. The rationale for this is explained in the introductory report on page 4 of P.122/2018.</p>	<p>The Minister agrees that much of the Income Tax (Jersey) Law 1961 (the “ITL”) is in need of review; those sentiments were echoed in the opening lines of her speech to the Assembly when she presented the principles of the draft Law. The ITL dates from 1961, and – while much of it has been amended and augmented through annual Finance Laws – some of the provisions bear a resemblance to its predecessor from 1928.</p> <p>Over the years, extra provisions have been added to the ITL. While some sections are new, others are in need of review and reform. The Tax Policy Unit regularly has to reprioritise its workload – for example, responding to demands from the international community (such as the EU Code Group’s requirements for economic substance rules) and the demands of the Assembly, so it is understandable that some stakeholders are frustrated that reform of the parts of the ITL that affect them have not been prioritised.</p> <p>Given the scale of the task, it will always be necessary to modernise tax law in stages. The administrative legal changes have been prioritised because the States voted to allocate significant funds to the revenue transformation programme to enable the provision of new systems. A timeline for other key modernisation provisions, not related to the draft Law, has been provided to the Panel.</p>
2	<p>The first tranche of the draft Law prepares the way for online filing of tax returns in 2020.</p>	<p>The Panel’s finding is correct. For example, when taxpayers file online, Revenue Jersey will no longer ordinarily require taxpayers to submit documentation in support of their return (e.g. mortgage interest certificates). Instead, taxpayers will be required to keep records in support of their return, so that they can be made available for a tax enquiry, if required.</p> <p>The new computer system will allow Revenue Jersey to move away from heavily manual processes, where every return is examined, to a risk-based process. This means some lower-risk tax returns will pass through the system without being inspected by a tax officer.</p> <p>The draft Law puts in place some of the key elements of this approach (e.g. civil penalties for inaccurate returns; interest for late payment), to ensure that the Comptroller has the ability to deal with the minority of taxpayers who choose not to comply with their tax obligations.</p>

	Findings	Comments
3	<p>The current tax laws are expected to be gradually replaced, beginning with the discussed draft Law. An Income Tax Law, a G.S.T. (Goods and Services Tax) Law, and a Stamp Duty Law are also expected, alongside the second tranche of the draft Law.</p>	<p>As mentioned above, the Tax Policy Unit has regularly to reprioritise its workload. The draft Law is a key piece of legislation that forms one part of the RTP, and that is why the Minister has lodged the first tranche now (online filing is on schedule to be switched on with effect from 1st January 2020).</p> <p>Aspects of the ITL have already been replaced (e.g. Part 19 relating to pensions and pension schemes was completely rewritten in the Income Tax (Amendment No. 44) (Jersey) Law 2014), and further aspects will be modernised, with the initial focus being on the taxation of married women, interest relief rules, and rules to determine the tax residence of individuals.</p> <p>For the avoidance of doubt, the Minister does not expect Revenue Jersey to undertake a major overhaul of the Goods and Services Tax (Jersey) Law 2007, considering the legislation is relatively new; in the consultation on stamp duty on enveloped properties, a broad question has been asked regarding how the Stamp Duties and Fees (Jersey) Law 1998 could be improved.</p>
4	<p>Stakeholders have raised concerns with the ‘piecemeal’ progress on tax reform, as well as the lack of protections for taxpayers, and past reforms to the tax system have been promised, but not delivered.</p>	<p>The Minister is disappointed that the Panel has characterised this phased approach to introducing changes to the tax legislation as ‘piecemeal’. Simply put, the Government does not have the resources to amend the entire tax legislation in one go, and the Minister is not persuaded that either the stakeholder community or the States Assembly could cope with the volume of work implied by not adopting a phased approach. Furthermore, the Minister believes that it is important that key matters are addressed in the short term, rather than bringing no tax changes to the States Assembly for, say, 3 years, and then seeking to introduce a whole new ITL. The Minister does not believe that this is the approach that States Members would want the Treasury to take.</p> <p>Revenue Jersey has engaged with representatives of the tax agent community this year, in order to address some of their longstanding concerns with some of the technical tax provisions. That work will continue, and in this respect a timeline has been provided to the Panel and to tax agents.</p>
5	<p>Stakeholders consulted during the review expressed concern about the Commissioners of Appeals’ potential lack of independence and the lack of transparency when making judgements. This is expected to be</p>	<p>The Minister notes that no real corroborating evidence has been adduced to support the view expressed by one or two tax agents that the Commissioners of Appeal lack independence or impartiality. She does, however, agree that some of the decisions made by the Commissioners should be published where they have</p>

	Findings	Comments
	dealt with through a second tranche of the Revenue Administration Law later in the year.	<p>value as precedent and, if legislation is required to allow that, she will propose a new Article in the next tranche of the RTP.</p> <p>It should be noted that the Commissioners will in any case be replaced by other arrangements recommended by the Jersey Law Commission and supported by the Government.</p>
6	The draft Law introduces civil penalties for “careless” or “deliberate” errors in tax returns. Stakeholders believe that these terms will require published general definitions to grant the taxpayer certainty on their position.	Revenue Jersey is well-advanced in the process of developing detailed guidance on civil penalties for “careless” or “deliberate” errors in tax returns. A discussion on this guidance will take place with stakeholders before lodging the second tranche of the RTP.
7	Articles 17–19 of the draft Law allow the Minister to set the rates of interest for the late payment of tax and overpayments of tax by Ministerial Order. Stakeholders have raised concerns that a lack of oversight could lead to a significant difference between the two rates.	The Minister has accepted the Panel’s three amendments on the issue of interest rates so that the States Assembly will have greater oversight of the rates ultimately introduced.
8	The evidence we received highlighted that production powers to settle ongoing tax enquiries have been used with increasing frequency. Article 26 of the draft Law would make it easier to access these powers. Stakeholders are concerned about the lack of a taxpayers’ right of appeal for these “fishing” expeditions.	<p>The Minister is surprised that the Panel does not share her concern with how infrequently these powers have been used in the past. For context, the Comptroller has used all of the production powers available to him only 9 times in the last 4 years. Together, their use involves potential additional revenues of over £4 million in tax (excluding any penalties). Many of the enquiries are ongoing exactly because taxpayers are slow to engage with the revenue department.</p> <p>Most production powers are currently contained in the main tax Laws relating to Income Tax and GST. The powers will be reviewed for the next tranche of the RTP in the expectation of making more of them subject to civil penalties for default (like the proposed Article 26). They are generally used against individuals and businesses where they refuse to co-operate with a tax enquiry: and they are used as the “last resort” before bringing the matter before the judiciary.</p> <p>The Minister considers that the concerns expressed to the Panel represent a minority view from a small number of tax agents; and notes that no similar concern was expressed by others providing evidence to the Panel, in particular the Chartered Institute of Taxation – who represent many of the Island’s agents.</p> <p>When conducting tax investigations and enquiries, the vast majority of information requested by the</p>

	Findings	Comments
		<p>Comptroller is provided voluntarily by taxpayers following a request by letter. Where taxpayers do not co-operate with an enquiry or investigation – and do not provide a reasonable excuse for not co-operating – it is essential that the Comptroller has sufficient powers to force the production of records and information. Everyone must pay their fair share of taxes.</p> <p>Existing production powers can, of course, already be appealed by way of Judicial Review and – where the Assembly supports the creation of new production powers with civil penalties rather than criminal sanctions – the penalty itself can be appealed before the Commissioners of Appeal, which will be less cumbersome for taxpayers, as well as Revenue Jersey.</p> <p>With reference to so-called “fishing expeditions”, that term is usually taken to mean an “<i>indiscriminate request for production of information in the hope of uncovering helpful information</i>”. Tax administrations generally avoid such approaches – while reserving always their right to conduct random compliance enquiries. The basic fact of the matter is that tax enquiries can be opened for purely compliance purposes – to establish that individuals and businesses have correctly returned their income, and this is an important check on the tax system. But the vast majority of tax compliance checks are not random: they explore perceived or proven risks of tax leakage and/or available intelligence; and the reality is that the Comptroller simply does not open speculative tax enquiries.</p>
9	<p>The Panel has received evidence that the Minister for Treasury and Resources will not be proposing Article 26 at this time, pending further consultation.</p>	<p>The Minister decided not to propose Article 26, knowing that the second tranche of the RTP would be examining formal production powers more broadly. The key question for the Panel to address (in preparation for this next stage of scrutiny) is just how much time they consider it is reasonable to allow a taxpayer to produce records and information when the Comptroller wishes to verify a tax declaration or establish whether a tax liability exists. Depending on the scope and complexity of what is being requested from the taxpayer, the Comptroller currently allows 60 days as a bare minimum.</p>

RECOMMENDATIONS

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
1	The Minister for Treasury and Resources should publish a clear timeline for implementing both the second tranche of the Revenue Administration Law and the ongoing reform of personal tax.	T&R	Accept	A timeline has been provided to the CSSP, and is included as an Annex to the addendum to the report presented alongside the original draft legislation.	Done
2	We considered lodging an amendment to introduce the statutory enquiry window, however we understand that the Minister is willing to prioritise this piece of work and bring forward proposals with the Government Plan in due course. We recommend that the Minister prioritises this work and we will hold the Minister to account in delivering this commitment.	T&R	Accept	Shortening the period within which additional assessments can be raised is one of the issues for discussion between Revenue Jersey and the tax agent community at forthcoming meetings. Regardless of the outcome of those discussions, the Minister is committed to reducing the current 5 year time period set out in Article 24 of the ITL.	Consultation in Q2 2019 Draft legislation later in 2019
3	The Comptroller has told us that guidance is being prepared and will be published in the third quarter of 2019. We recommend that the Minister prioritises the publication of this guidance.	T&R	Accept	Guidance is currently in draft format, and it will be shared with stakeholders for comment before it is published.	Q2 2019
4	We consider that a requirement for interest rates on under- and over-paid tax, to be set by Regulations, will provide additional oversight for the Assembly on the rates being proposed. It will also ensure that the Assembly can challenge any rates proposed by the Minister that are excessive or result in a significant differential between the rates for late paid tax and overpaid tax.	T&R	Accept	The Minister has accepted the CSSP's amendments on this matter, and expects to bring forward Regulations in due course.	Regs. to follow enactment of the draft Law
5	Whilst we acknowledge the rationale provided by the Comptroller for the use of production powers, we consider that a right of appeal for the powers contained in the	T&R	Reject	The provision as drafted did – being a civil procedure – allow for appeal of penalty	Consultation on information powers in

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	draft Law would provide some balance to the law and protection for taxpayers. We have therefore lodged an amendment to the draft Law to introduce an appeal process which mirrors the existing appeal process in operation.			before the Commissioners of Appeal. The Minister considers a second appeal provision against the same matter (i.e. failure to produce records) to be excessive, allowing an unco-operative taxpayer over 120 days to frustrate a tax investigation before facing judicial penalties. For that reason, and because the information production powers are going to be subject to review in 2019, the Minister has decided not to propose the relevant Article of the draft Law.	Q2 2019 Draft legislation later in 2019

CONCLUSION

The Minister welcomes the report issued by the CSSP, notwithstanding some differences of opinion regarding certain provisions in the draft Law. The Minister is disappointed that the Panel was not able to take evidence from a wider section of stakeholders in our tax system, and that it has given quite so much weight to the views of just one or two tax agents, rather than the views of the agents' principal professional body (the Chartered Institute of Taxation) and the Comptroller. Following a number of constructive meetings between the Minister and the Panel, she hopes that the Panel is able to appreciate the importance of this piece of legislation, and the part it plays in the overall revenue transformation programme.

The Minister understands States Members' concerns regarding other taxation matters, not least the taxation of married women, and stresses that those "policy" issues are being worked on separately: there need not be any further delay in implementing the draft Law. It is therefore important to "close the book" on this first tranche of the new Revenue Administration Law – to allow officials to focus their energy on the next tranche of law, and also to complete other important tax policy reviews which the Minister wishes to bring forward alongside the Government Plan.