
STATES OF JERSEY



INCOME TAX (PAYMENT OF 2019 LIABILITY) REGULATIONS REVIEW (S.R.8/2021): RESPONSE OF THE MINISTER FOR TREASURY AND RESOURCES

**Presented to the States on 6th May 2021
by the Minister for Treasury and Resources**

STATES GREFFE

**INCOME TAX (PAYMENT OF 2019 LIABILITY) REGULATIONS
REVIEW(S.R.8/2021): RESPONSE OF THE MINISTER FOR TREASURY
AND RESOURCES**

Ministerial Response to:	S.R.8/2021
Ministerial Response required by:	3rd May 2021
Review title:	Income Tax (Payment of 2019 Liability) Regulations Review
Scrutiny Panel:	Corporate Services Scrutiny Panel

INTRODUCTION

The Minister welcomes the report of the Panel and the support of the States Assembly for this important measure. The Minister's detailed comments are set out below.

FINDINGS

	Findings	Comments
1	Regulation 11 may not properly take into account all of the personal circumstances of some pensioners with outstanding 2019 liabilities who may not have the ability to settle from their estate.	All taxpayers are obliged to settle their tax liabilities during their lifetime and their executors are obliged to settle any outstanding (tax etc) debts from taxpayers' testamentary estates. In Jersey, islanders seldom fail to settle their dues. However, where a taxpayer cannot settle their debts during their lifetime or upon death, existing long-standing debt-management procedures would be followed.
2	Taxpayers who will retire during the repayment term of the 2019 liability could be unable to make payments as they fall due under Regulation 3, as they will become reliant on a fixed income pension which may not include provision for the 2019 liability and could result in an inability to pay the remaining balance. This could result in a substantial liability for those due to retire in the next five years. No provision has been made in the Regulations for a final payment from the estate on death in this circumstance	It must be remembered that PYB taxpayers who have benefited most from the abolition of PYB are self-employed people and PYB employees. The PYB liability – since 1928 – has always needed to be settled either partly on retirement and then finally on death or by other means. Most people – particularly lower and middle-income taxpayers do pay down their PYB tax liability as they approach retirement. The Regulations provide a long and generous “time to pay” arrangement which was not available to previous generations. If paid over 17 years, for the vast majority of pensioners and people approaching retirement, the annual payment represents a fraction of one per centage point of current income. The value of the

	Findings	Comments
	and the taxpayer is therefore reliant on negotiations with the Comptroller.	payment will reduce in real terms over the payment period on account of no interest being charged.
3	It is difficult at this stage to predict the impact of the Regulations on self-employed taxpayers, but some are likely to be detrimentally affected and unable to settle the 2019 liability.	The abolition of PYB was accelerated primarily to help self-employed who could have faced severe hardship in November 2020 or through 2021 had the PYB basis not been abolished. They have been allowed to keep money in their pockets (tax based on 2019 income) which was due to be paid over in 2020 or 2021. The payment provisions available in the Regulations make it improbable that people would be unable to settle the 2019 liability under the terms provided by the Regulations but, as always, Jersey's debt-management procedures make ample provision to treat debtors sympathetically.
4	The Regulations provide for the exercise of the Comptroller's discretion in allowing a second or subsequent payment holiday for the 2019 liability. The matters which would be taken into account are not prescribed by the Regulations, so affected taxpayers are not in a position to understand whether they are likely to benefit from these arrangements before applying, or to challenge a decision against them.	The Comptroller will issue further guidance based on existing guidance on debtmanagement procedures.
5	There is no mechanism presently set out to remind taxpayers who have elected for deferred payment of the need to build up funds to make payment when it falls due for the 2019 liability. This represents a risk to the collection of the 2019 liabilities at a future date.	This will be addressed in the next stage of project work when payments systems are developed and surrounding standard operating procedures are developed.
6	Regulation 7(5) does not recognise that a taxpayer unable to pay the 2019 liability twelve months after reaching pensionable age may already have made some payments towards the liability.	This eventuality is covered by existing law and practice but the Minister welcomes CSSP's amendment for clarification of the matter.

	Findings	Comments
7	The Regulations do not currently provide a mechanism for collection of the 2019 liability if deferred beyond 31 December 2041, if there is doubt concerning the taxpayer's ability to pay the 2019 liability as it falls due.	It is most likely that any such cases would be handled using the debtmanagement processes obtaining at the time the liability does fall due. However, the Minister is prepared to review this issue when the Regulations are reviewed at their tenth anniversary.
8	There is currently no satisfactory mechanism for dealing with a disputed tax liability between a couple in the event of divorce or dissolution of a civil partnership. The Regulations leave the husband or Spouse A liable for the 2019 liability. This poses a risk when couples divorce and may exacerbate the practical and financial difficulties the couple are facing. This could adversely affect the mental health of individuals and may also impact negatively on children of the relationship.	<p>As set out in the Report accompanying the primary statute (P. 118/2020), the liability rests with Spouse A but Article 42 of the Income Tax Law does allow the Comptroller to determine who should be pursued in the collection of that debt and so can be used where a separating couple cannot reach agreement between themselves as to how to deal with any unpaid taxes. This means that the Comptroller can pursue Spouse B for the proper share of a tax liability or debt, based on analysis of tax returns which separately identify the incomes of Spouses A and B.</p> <p>All such apportioned tax assessments are capable of review on request; and are also appealable to the Commissioners of Appeal for taxes and to the Royal Court.</p> <p>In extremis, the Comptroller – with the consent of all parties – would advise a separating couple and their lawyers of his view of the correct apportionment of liabilities by reference to Article 42.</p> <p>In practice, this has seldom occurred and not as far he is aware during the tenure of the current Comptroller.</p> <p>The general concern expressed by CSSP is a consequence of the correct but archaic operation of so-called “Married Man’s Taxation” which will be abolished in due course as announced by the Minister on 8 March 2021. Treasury and Revenue Jersey debt-management procedures are sensitive to the stresses cause by divorce and separation but the law does require outstanding tax debts to be pursued in a fair and proportionate way.</p>

	Findings	Comments
9	Budgeting for the revenue stream arising from the collection of the 2019 tax liability will be a challenging task for Treasury, and the amounts involved are significant. This could potentially add risk to the management of Government expenditure over an extended period.	This factor will be given due consideration by the Income Forecasting Group and the Treasurer of the States.
10	Deferral by taxpayers of the 2019 tax liabilities under the Regulations presents a risk to public revenue and potential for unfair application of the Regulations between taxpayers.	Revenue Jersey will continue to administer all laws and regulations for which it has responsibility as equitably as possible and in accordance with Revenue Officers' Oaths of Office. A mixture of guidance; training; and routes of appeal against decisions will, as in other areas of tax-compliance work, help to ensure the correct application of tax law across the piece.
11	The focus group feedback highlighted that a number of taxpayers with a 2019 liability would like the opportunity to see the outstanding liability and manage the basic administration of their liability themselves, ideally through a digital platform.	The scope to meet the wishes of taxpayers (including those expressed in the Focus Groups) will be examined in the next stage of this project.
12	It is likely that there will be a number of taxpayers who are not able to confidently engage through a digital platform and will require additional assistance to manage their 2019 liability.	As is usual, Revenue Jersey will make provision for those who cannot – or prefer not to – engage digitally.
13	Collection by the Comptroller of Revenue of the 2019 liability from taxpayers in advance of new computer systems being developed and implemented by Revenue Jersey needs to be carefully managed to ensure it is correctly assigned to the liability.	Existing systems are correctly allocating payments to the 2019 liability in the cases where taxpayers have asked to settle the liability immediately.
14	The current estimate of one additional member of staff by Revenue Jersey to	The estimate of costs contained in the Report with P.9/2021 is an early estimate and will be refined

	Findings	Comments
	complete the administration may be inadequate. The Panel is concerned that the implementation of the Regulations will put additional pressure on the Revenue Jersey Team.	as the Business Case is further developed. The estimate of one staff year over, say, 20 years, is an average: more resources will be needed in the early years when payment plans are being set up.

RECOMMENDATIONS

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
1	The Minister for Treasury and Resources must ensure that when an application is made in a case of hardship by a pensioner and it is identified that there are insufficient assets available from the estate to meet the 2019 liability, that financial projections will acknowledge the amount of the liability to be recovered and the amount which is irrecoverable.	MTR	Partly accepted	All taxpayers are expected to pay their tax liabilities either during their lifetimes or – if necessary - from their testamentary estates. If any taxpayer is effectively bankrupt in their lifetime or at death, existing debt-management procedures would come into effect. Government accounting rules for handling write-offs are well established.	N/A
2	The Minister for Treasury and Resources must provide clarity in the Regulations for those taxpayers who elect to pay the 2019 liability by Regulation 3 but will retire during the term of the liability and do not hold a pension with sufficient value to cover the remaining liability, and determine	MTR	Partly accepted	This will be addressed in guidance rather than Regulations as it is expected that, over 17 years, the annual payment will represent less than one per cent of annual income.	31/3/2022

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	whether they can be considered as hardship cases and enable the remaining payment to be secured from the estate of those taxpayers.				
3	The Comptroller for Revenue must apply powers considerately to self-employed taxpayers and clarify whether fluctuating rates of yearly payments aligned to income could be made by this category of taxpayer who elect to pay the 2019 liability by Regulations 3.	MTR	Accepted	The Comptroller will apply all the discretion available to him in the revenue laws to enable taxpayers to meet their commitments under those laws.	N/A
4	The Comptroller of Revenue must provide financial projections which reflect payment holidays taken by taxpayers in the accounting records of the 2019 liability.	MTR	Accepted in principle	The Comptroller and the Treasurer will seek to produce clear financial projections, taking all known factors into account, to inform the work of the Income Forecasting Group.	30/6/2025
5	The Comptroller for Revenue must ensure that the basis of decision-making on whether or not to approve a second or subsequent payment holiday is a matter of public record.	MTR	Accepted	As stated at the Public Hearing, the Comptroller will publish Guidance as part of the introduction of this scheme in 2022.	31/3/2022

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
6	The Comptroller for Revenue must ensure that a form of reminder exists for taxpayers who have elected for deferred payment on a periodical basis, which will encourage taxpayers to review their financial position and ensure that they are building up funds to pay their 2019 liability when it falls due.	MTR	Accepted	This will be built into standard operating procedures for this scheme.	31/3/2023
7	The States Assembly should agree the amendment to the Regulations lodged by the Panel which recognises payments already made on account of the 2019 liability to determine the amount due and payable under Regulation 7 (5) – payment by instalments of the liability previously deferred.	MTR	Accepted	The Minister believes this is the effect of existing law and practice but is happy to accept this recommendation for avoidance of doubt.	24/3/2021
8	The States Assembly should agree the amendment to the Regulations lodged by the Panel to provide for a review of the collection of the 2019 liabilities to be carried out after 10 years and a report be presented to the States Assembly. The review should	MTR	Accepted	The Minister is content to accept this recommendation and will make a provision in the next Tax Amendment Law she lodges to ensure that the Regulations can be changed in future.	30/6/2031

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	determine whether further amendments to the Regulations are necessary, particularly in connection with liabilities deferred beyond 2041.				
9	The Minister for Treasury and Resources should consider amending the Income Tax law to provide that in the event of divorce or dissolution of a civil partnership the Courts may rule on the 2019 tax liability of the couple rather than the Comptroller of Revenue.	MTR	Rejected	<p>The Comptroller's ability to pursue a tax liability (current year or prior year) against Spouse B is limited and is set out in Article 42 of the Income Tax Law.</p> <p>As set out in the Report accompanying the primary statute (P. 118/2020), the 2019 PYB liability rests with Spouse A. Article 42 does allow the Comptroller to intervene to determine which spouse or partner should be pursued for that tax liability where a separating couple cannot reach agreement between themselves - so that he can pursue Spouse B for the proper share of a tax liability or debt. This is based on analysis of tax returns which do separately identify the incomes of Spouses A and B.</p> <p>All such apportioned tax assessments are capable of review on request; and are also appealable to the Commissioners of Appeal for taxes and to the Royal Court.</p> <p>In extremis, the Comptroller – with the consent of all parties – would advise a separating couple and their lawyers of his view of the correct apportionment of liabilities by reference to Article 42. In practice, this has seldom occurred and not as far he is aware during the tenure of the current Comptroller.</p> <p>The general concern expressed by CSSP is a consequence of the correct</p>	N/A

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
				<p>but archaic operation of so-called “Married Man’s Taxation” which will be abolished in due course as announced by the Minister on 8 March 2021.</p> <p>Treasury and Revenue Jersey debt-management procedures are sensitive to the stresses cause by divorce and separation, but the law does require outstanding tax debts to be pursued in a fair and proportionate way.</p> <p>If necessary, the Comptroller could provide a statement to each of the spouses/partners confirming his determination as to which spouse or partner he intends to pursue (should there be evidence to underpin pursuing only one) so that when before a court the tax liability can be fairly taken into account in the round.</p>	
10	The Minister for Treasury and Resources must ensure that a formal system of reporting and review in relation to the 2019 tax liability and the collection of the revenue in a timely and efficient manner is established and adequately reflected in the Annual Report and Accounts.	MTR	Accepted	The Minister does expect formal reporting of the collection of the 2019 frozen PYB liability to be undertaken – to inform Treasury income forecasting and the management of the Government’s Covid-related debt.	31/12/2025
11	The Minister for Treasury and Resources must ensure that the proposals for administering collection of the 2019 liability includes the development of a digital facility for taxpayers to	MTR	Accepted	<p>This is the Minister’s clear intention as set out in her evidence to CSSP.</p> <p>The scope to meet customer needs identified by the Focus Groups will be explored in the next phase of this project.</p>	30/9/2024

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
	manage the administration themselves which will include periodical notifications of the outstanding 2019 liability to taxpayers and confirm payments made towards a 2019 liability. The digital facility should be operational from when election of the 2019 liability is required.				
12	The Comptroller of Revenue should establish and maintain internal controls and reporting mechanisms to ensure management and oversight of the 2019 liability and adequate resourcing to achieve delivery.	MTR	Accepted	Internal controls and reporting mechanisms will encompass the monitoring of collection of the 2019 PYB liability and the Comptroller will keep the Treasurer and the Minister apprised of resourcing requirements.	30/6/2024
13	The Minister for Treasury and Resources should reconsider the manpower and financial implications if these Regulations are adopted to ensure propriety and regularity responsibilities under the Public Finances (Jersey) Law 2019 have been fulfilled adequately.	MTR	Partly Accepted	The existing estimates are preliminary and will be reviewed as the Business Case develops.	31/12/2022

CONCLUSION

The Minister welcomes the Panel's report and is grateful for their support in seeing these Regulations adopted by the States Assembly on 23 March 2021.

Bringing P.118/2018 last autumn was motivated by two primary factors:

- To address another historic anomaly in Jersey's tax administration, which caused problems for many PYB taxpayers, most notably upon retirement; and which has now put all taxpayers on the same footing in terms of the tax they are paying. This was a planned initiative (for 2022) but was been accelerated on account of the other factors listed below. The benefits are numerous, and they pave the way for more straightforward implementation of other measures – principally Independent Taxation which will start to be introduced from January 2022.
- Adoption of the amendment to the Income Tax Law on 4 November meant that many taxpayers, some of whom were (and still are) suffering financially because of Covid-19/lockdown, did not have to make a “payment on account” on November 30th. It is currently estimated that the total cash-flow benefit to those PYB Islanders is in the region of £35 million.

Whilst not a prime motivation, in addition:

- Crystallising and scheduling payment of the 2019 income tax liability (currently estimated in the region of £350 million) allows Government cash-flow planning which means that borrowing to pay for the costs, direct and indirect, of Covid-19 can be repaid without the need to introduce additional taxation or income-raising measures. This change WAS NOT an additional taxation measure. It provides a timing structure to payment of income tax liabilities which would need to be paid anyway.

The Minister is delighted that this measure has been implemented as it does make the planned move to Independent Taxation much easier to achieve – itself a significant measure which addresses fundamental issues of human rights.

At the same time, making this historic change now has benefited individual Islanders who may have suffered a reduction in income and, as a by-product, provide a structured plan to repay borrowing needed to address the financial consequences of Covid – without the need for extra taxation.