

Independent Taxation Legislation - Stage 2

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Many thanks for your email and the opportunity to comment on the revised draft legislation concerning Stage 2 of Independent Taxation.

To be honest very little has changed since my comments last June. I have updated these below and dovetailed them to the specific questions asked. Most of the comments are a repetition of comments made in previous consultations.

In my opinion we are still trying to use a very old, outdated tax system for more than one purpose which will always mean that compromises are needed. It will be up to the Assembly to decide whether these compromises are in the long term best interests of the island.

The tax system should collect tax whilst the benefit system should give reliefs and the two should not overlap.

1. Whether the Proposition is adequately aligned to realistically meet its intended aims.

No.

This is simply a political manoeuvre. The political aim at the outset was to introduce independent taxation despite the fact the majority of islanders did not actually request it. It is noted from the surveys that the people who responded requested independent taxation, but the number of responses were not significant when looking at the taxpayer population. The whole project would appear to be a fudge to try and solve some of the numerous issues within the tax system that have been identified over many years.

In saying the above, I have no objection to independent taxation that is low, broad, simple and fair. The proposals on the table are not simple or fair and is another example of Government tinkering with outdated tax legalisation rather than designing a tax system that is fit for purpose.

The change to allow dual filing we have been presented with, on a piecemeal basis, is not independent taxation but neither is the separate filing where there is a compensatory allowance. The use of the word independent in relation to all these changes is a misnomer.

The existence of the compensatory allowance (and now potentially dual filing) means, in real terms, that true independent taxation will not exist for decades as to calculate the correct amount of tax due and the amount of any compensatory allowance, it is necessary for every qualifying couple to know the total income of both spouses.

In relation to non-joint returns the proposal is that each spouse will complete a separate return and then Revenue Jersey ("RJ") will bring the two returns together to calculate the compensatory allowance. If spouse A and spouse B have returned their income separately how does both spouse A and spouse B know that their assessments are correct as they will be unable to check any compensatory allowance without having knowledge of the other spouse's income. Will this simply lead to more administration, uncertainty and appeals. I am unable to see how the mandatory sharing of information can be described as independent.

2. Whether the Proposition highlights any areas of unintended taxation related risks, weakness, consequences, irregularities, and gaps which may have been overlooked.

The inequality in relation to the date that people arrive in Jersey or marry has been well publicised. I am unable to reconcile the fact that identical couples are faced with significantly different tax liabilities depending upon their date of arrival or the date they married. These differences running into thousands of pounds each year that the compensatory allowance exists. As soon as the compensatory allowance reduces or is abolished the tax landscape levels but with the result that many more islanders (thousands) face significantly larger tax demands.

The fact that certain sections of the population who have been in Jersey all their lives will never be able to benefit from compensatory allowance does not make Jersey an attractive place for the young to continue to live. Attracting staff from overseas is already difficult but then trying to explain to them that they have to pay more tax than their colleagues will be a difficult sell. Given the aging population I was under the impression that government wished to attract more economically active people to the island not less.

To be clear under the current proposals, the youngsters of today who decide to stay here, marry, and raise a family will never be able to benefit from the compensatory allowance so will face higher taxes which makes the island an even more expensive place to live.

Independent taxation with or without dual filing equals increased taxation for many and an increased administration burden for most.

3. Whether the proposed legislative approach and implementation of the proposals are

practicably feasible and if any challenges are apparent in that regard.

Unfortunately based on the draft legislation it is impossible to determine how RJ will actually administer the new law. It would appear that in many cases we will have two filings of the same information to calculate the tax. This would appear to be pointless except that it creates additional administration and cost for RJ and taxpayers. RJ will be faced with thousands of new tax records.

All the administration consequences have also not been addressed.

Besides an extra return and an extra assessment to collect no additional tax, how will the administration work under both independent taxation and the new dual system proposed?

For example, what happens if spouse A earns £5k and spouse B earns 30k. Spouse B gets a transferable allowance of (say) £10k so his tax is now 3k.

However, spouse A has underdeclared their income by £5k so they now must amend spouse B's assessment and ask them for more tax.

Where do penalties / interest lie – RJ cannot charge interest on spouse A as there is no liability.

Or

What happens if spouse A submits on 1 January and spouse B on 31 July – when do RJ raise the assessment, or what happens if spouse B does not submit a return at all?

Will this simply lead to more appeals.

Or

What is the position if there is double tax credit relief available – how is this to be addressed?

Or

How are changes to ITIS rates to be dealt with where there are missing / incorrect returns or returns submitted at different times.

Or

Has the information that has to be provided to other departments been considered with the advent of possibly two returns?

Or

Will HVR's be able to benefit from the compensatory allowance?

Or

Can taxpayers decide to file jointly one year and independently the next?

Or

How are repayments dealt with and who will receive the credit on a jointly filed tax return?

There are numerous administration issues (too many to list) that have yet to be legislated for and there would appear to be no timeframe for the publication of these.

I assume that there is no issue presently, or in the future, with data protection when you are looking to compel a person to disclose private information about their spouse / civil partner as it can be argued that under the tax rules the information relating to their spouse / civil partner is no longer automatically relevant to the other party if they can file independently.

I am also not clear as to the legal position of data sharing between the two "independent" parties where they have filed independently but assume that this has been addressed.

4. The impact, both negative and positive of the proposals.

On the face of it the introduction of a joint “independent” tax return reduces the administration requirements for both taxpayers and RJ but I am not certain that this is the case in that RJ will have to administer a separate system outside of independent taxation that exist for persons marrying or arriving in the island after 31 December 2021, or people who have elected for true independent taxation. The compensatory allowance will slow down the assessing process as RJ will have to wait for all returns to be submitted before finalising any assessment.

The way that it has been introduced penalises those couples who wish to spend more time as a family unit. These tax changes highlight that the Tax Law actively encourages both parents to work and for parents to pass some of their “parental responsibilities” onto already under resourced schools and nurseries and anyone else other than the parents who now have to both work to be able to live and survive in the island. How the accompanying children’s rights impact assessments can state that there is no impact on children and younger people is puzzling.

There have always been winners and losers in relation to taxation (but rarely do two identical couples pay different amounts of tax) and the proposal as drafted should ensure that no additional losers are created from existing and future taxpayers.

However as stated above, the existence of the compensatory allowance does however create an additional two-tier system (in addition to the two-calculation tax system we already have) depending on date of marriage / arrival in the island. I would suggest that RJ is already stretched to its limits and I believe would struggle should any additional burden be placed upon them.

Unfortunately, I am unable to see anything positive in the compulsory move to separate assessment (it is not independent taxation) for any person who is receiving the compensatory allowance and has not yet elected to be taxed independently. I certainly see nothing positive for new taxpayers of persons whose tax status has changed since 1 January 2022.

The proposals do create a level playing field in that the current system does disadvantage some married couples and under the proposals they will no longer suffer this penalty. However the ability to elect into independent taxation has dealt with this anomaly and I expect that all affected persons have already elected.

However, for the majority it is just additional red tape to achieve nothing.

5. The consultation process in respect of the Proposition.

At each stage of the consultation, it has been highlighted that the Income Tax Jersey Law 1961 (as amended) is no longer fit for purpose and that the plans for “independent taxation” are not independent for those receiving the compensatory allowance.

This was the perfect opportunity to create a tax system that was fit for purpose but with the advent of the compensatory allowance this opportunity has been missed and the can simply kicked down the road.

From a high level it has been communicated to the public that any qualifying taxpayers will not be worse off. However, I am not sure that new taxpayers and the young realise that they are being permanently disadvantaged.

I am also not certain that the amount of additional administration that will be required has been communicated to the thousands of people, who have never had to understand the tax system in Jersey.

I am satisfied that those persons who are better off under “independent taxation” or simply wanted to be treated independently have had sufficient information to make the necessary claims / elections and that they will have done so. It seems bizarre to introduce complexities to so many people to address the concerns of a few, when those concerns were already being dealt with through a simple election.

6. The impact of the proposals on pensioners.

I am not sure that it is correct to simply highlight pensioners and infer that they will struggle more than others. Jersey has a considerable amount of low earning families who will be equally affected. In fact, due to the compensatory allowance most pensioners will be better off than newlyweds or young families arriving in the island.

There is uncertainty and complexity for every married taxpayer regardless of age.

7. The impact of the proposals on coercive and controlling behaviour.

I am not an expert in relation to coercive and controlling behaviour and my comments are my general thoughts, but it would appear to be a little naive to suggest that tax returns / demands arriving in two envelopes rather than one will give the person who is being coerced any more protection or confidentiality than if they arrived in a single envelope.

One can only wish that the problem of financial control was so easily solved. I believe the proposition from Deputy Doublet is little more than a distraction from the real issues that certain parties face. I would respectfully suggest that the Deputy may wish to consider the after-tax reduction in the level of income in certain households (the newly married, the new arrivals) and what effect this reduction in funds will have in relation to coercive and controlling behaviour rather than creating an administrative change that brings no financial benefit.

Summary

It is accepted that if one was designing a new tax system then each person would be taxed independently.

The tax system should sit side by side with the benefits system that would deal with child allowance, childcare relief etc.

Unfortunately, the opportunity to design a new tax system has been continually missed and the proposals passed to date and proposed are simply further political tinkering which will create additional complexity, unwanted administration and extra taxation for thousands of islanders.

The creation of thousands of new taxpayers will cause capacity issues for tax agents as well as RJ before considering any anxiety and stress that these new taxpayers will experience.

I would conclude that the number of early adopters of "independent taxation" is a clear steer of the actual appetite for mandatory independent taxation amongst the existing qualifying taxpayer base.

The Government of Jersey has been discussing the subject since at least 1990 (when the UK introduced independent taxation) and it is disappointing, but hardly surprising, they have simply put off making a firm decision to completely reform the tax system.

The fact that identical taxpayers do not pay identical taxation under the proposals is simply unacceptable. I will wait to see what happens when the mandatory allowance is removed and what new unsatisfactory compromise is proposed to create further unfairness between new and old taxpayers.

The issues with the computer system of RJ are well documented as are the current shortcomings concerning certain areas of operation (payment statements as a simple example). The introduction

of independent taxation, dual returns, compensatory allowances will create further complexity in the computational and collection programmes, and I have little confidence that their systems will cope. One has to remember that Government revenue systems currently deal with tax rates of 0%, 1.5%, 1.95%, 5%, 10%, 20%, 26% as well as social security rates of 0%, 2.5%, 6%, 6.5% and ITIS.

In addition to running the above then independent assessment calculations (remember certain reliefs will need to be apportioned) will need to be performed and the system will also have to cope with the deferred 2019 liability payments which seem to have been put back again. This deferral is generally benefitting the same taxpayers who will receive the compensatory allowance.

We have seen in recent weeks that the payment of the “frozen 2019” has been put back still further to help islanders (these islanders not being the ones penalised above). The cynic in me says it is really because the Tax IT systems simply cannot cope.

When the 2019 taxes are finally full paid, they will, in real terms, be worth a fraction of the value of the original amount. Suggestions of discounts etc. were put forward and rejected out of hand but if I was a betting man any discount offered in 2020 would not have considered the levels of inflation we have seen and Treasury would have benefitted. Maybe it is time to take the 2019 problem off the table and offer a value of money discount so that tax is collected now and can be reinvested into a tax system that is fit for purpose.

The suggested amendment by Deputy Doublet, though proposed with good intentions, would in my opinion not make a material difference to coercive and controlling behaviour and by its very nature support the basic fundamentals of the proposals that will see the income of certain family households being significantly reduced which I would suggest will create greater issues.

I trust that above is sufficient for your review but if you should require clarification on any point, please do not hesitate to contact me.

Kind regards

John