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States   
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**Revenue Jersey**

5 February 2019

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**DRAFT REVENUE ADMINISTRATION (JERSEY) LAW: FURTHER  
INFORMATION**

Further to your email of 31 January, here is the additional information which you requested.

**Question 1: Article 26 – the power to request records is wide ranging. Why is this necessary, rather than, for example, being limited to where careless or deliberate error is suspected?**

2. Article 26 is a “production power”. Such powers are only used where earlier requests for information have been ignored by the taxpayer during the course of a compliance check.

3. The behaviour exhibited by a taxpayer can be difficult to establish until one has examined all of the available information to determine whether that behaviour was reasonable, careless or deliberate.

4. Where a taxpayer has steadfastly declined to produce records without providing a reasonable excuse for not doing so, a power of this magnitude is the usual way to elicit co-operation or – failing co-operation – to bring the matter before a judicial body. (It should be noted that, if a taxpayer has been

persistently un-cooperative, that may often serve as an early indicator of potential wrongdoing.)

5. The production power in Article 26 relies upon civil penalties – not criminal – and includes judicial oversight by way of appeal to the independent Commissioners of Appeal as opposed to being by way of a criminal trial. This is particularly appropriate given the population of taxpayers affected by Part 6.

6. Part 6 (Articles 22 to 28) of the Draft Revenue Administration (Jersey) Law (the “RAL”) relates solely to individual (personal) taxpayers and not to their business activities or to businesses. This Part relates to the new obligations placed on such taxpayers arising from the shift towards online filing at which time taxpayers will not be required to send documentation in support of their (paper) tax return to the Comptroller.

7. While giving evidence to CSSP on 31 January 2019, Mr Shenton suggested that Article 26 duplicated Article 16A of the Income Tax (Jersey) Law 1961 but this is not the case. Article 26 is limited in its scope as I describe matters above. Article 16A is wider in its application and is, of course, subject to criminal penalties.

8. Business records are subject to longer retention periods in the tax law and different production powers do currently apply (which will also be reviewed in due course). This is important for a number of reasons, not least of which is the requirement for business records to be kept for the purposes of enabling us to discharge our functions as a Competent Authority for the exchange of information under various international tax treaties.

**Question 2: Why have terms “careless” and “deliberate” been used, rather than using the language of the current law, i.e. negligence and fraud?**

9. As Mr Shenton explained during his appearance before CSSP, Jersey’s tax laws have always been modelled upon UK tax law and it is the practice of the Royal Court to give regard to UK case law and precedent where it deems it is appropriate to do so. The use of the terms “careless” and “deliberate” reflects up-to-date language in UK tax statutes and is more appropriate language within the context of civil proceedings with a well-developed legal understanding of the concepts. (It is also considered that this language is more accessible to people whose first language is not English.) The use of the language has, of course, been supported by the Legislative Drafter and the Law Officers’ Department.

**Question 3: What guidance will the taxes office be producing regarding the definition of terms in the law such as “careless” and “deliberate” and when will this guidance be published?**

10. Guidance is currently being drafted and will be circulated for comment to key stakeholder groups. We expect to publish it in the third quarter of 2019 (matters likely to be subject to the new penalties are unlikely to be examined before 2020). If helpful, the CSSP can see the comparable UK/HMRC guidance at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/703432/CC-FS7A.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/703432/CC-FS7A.pdf)

11. It is the Comptroller’s general policy – wherever possible – to create only one piece of guidance for use both by taxpayers and tax officers. As mentioned above, a large body of legal precedent already exists around the meaning of these terms and the Commissioners of Appeal and Royal Court remain the ultimate arbiters of judgments about the nature of behaviours exhibited.

**Question 4: Interest on late payments – what rate is charged in other jurisdictions and do other jurisdictions cap their rate in any way?**

12. A table of comparative analysis is attached in **Annex A**.

**Question 5: Some submissions called for closer alignment between interest on late paid tax and overpaid tax. How much tax falls into each of these categories currently? (please provide data for the last 3 years)**

13. The table below shows the total amount of the tax (personal and corporate), surcharge, and late filing penalty outstanding at the date the surcharge is applied (second column) . It also shows the position at 30, 60, 90, and 120 days later.

Year of assessment	Position on surcharge day	30 days later	60 days later	90 days later	120 days later
2015	£8.7m	£4.9m	£4.4m	£4.0m	£3.9m
2016	£6.3m	£4.7m	£4.3m	£4.0m	£3.6m
2017	£6.8m	£3.7m	n/a	n/a	n/a

14. The second table shows total repayments made in respect of personal and corporate income tax. It should be noted that there are few statutory repayment

dates but that the taxes office makes every effort to process all repayments timeously. In many cases (notably under the current year basis regime) ITIS repayments are issued before the payment due date, meaning interest would not be payable in accordance with the RAL.

15. The ITIS column includes taxpayers who have made payments towards their tax liability via deductions made by their employer; the non-ITIS column includes companies that pay income tax, and individuals who do not pay by ITIS e.g. pensioners and self-employed:

Year of assessment	ITIS	Non-ITIS	Total
2015	£7.9m	£5.9m	£13.8m
2016	£8.3m	£5.4m	£13.7m
2017	£7.4m	£4.2m	£11.6m

16. Most jurisdictions operate a “spread” between the interest rate chargeable on tax paid late and on any repayments of monies which are incorrectly withheld from taxpayers beyond a statutory (repayment) date.

17. Some jurisdictions also make “repayment supplements” in wider ranges of circumstances. For example, where all – or part – of a tax assessment is appealed, some jurisdictions require the appealed amount to be paid up-front and will compensate the taxpayer with interest when an appeal is found in favour of the taxpayer. In Jersey we currently do not charge interest on appealed taxes which remain uncollected until an appeal is decided in favour of the tax administration. The Draft RAL would see interest charged in such circumstances in future, removing any incentive simply to appeal to erode the value of the tax charge.

**Question 6: Was a statutory assessment window considered when the law was drafted and how would this work in practice?**

18. A statutory assessment window is under consideration and the Minister welcomes the views of CSSP on this question.

19. The overall effect of current law is that the Comptroller may enquire into 5 previous years of assessment, except where there are grounds to believe that tax fraud and/or evasion may be in play (in which case a longer period of scrutiny

may be appropriate, especially where a tax assessment with penalties is being offered in place of a criminal prosecution with a potential custodial penalty).

20. The Minister is sympathetic to reducing this timeframe but does not consider that Jersey could emulate the one year window that exists in the UK, mentioned by Mr Shenton.

21. It will be important to balance competing needs here of fairness towards the individual taxpayer whose affairs are under enquiry and potentially incorrect (for whatever reason); and to ensure equity of outcome with regard to the majority of taxpayers who do pay the right tax at the right time.

22. There will also need to be transitional provisions with regard to ongoing compliance work.

**Question 7: EY drew attention to the existing ability to levy a surcharge on late paid tax at a rate of 10%, which is being retained (and accelerated) in addition to the penalty interest. Why is it necessary to have both the surcharge and the penalty interest?**

23. The surcharge is currently payable on income tax not paid “by 6 pm on the Friday following the first Monday in December of the year next following the year of assessment”.

24. For simplicity – and to operate online filing effectively – Budget 2019 made the future deadline midnight on 30 November of the year immediately following the year of assessment (and midnight on 30 September for certain large companies). This takes effect with respect to the year of assessment 2019, with the first affected payments being in 2020.

25. The surcharge operates to dis-incentivise late payment after what remains a generous period of grace between earning income and paying tax on income (and bearing in mind most individuals pay tax monthly via the Income Tax Instalment Scheme).

26. Interest charges are simply commercial restitution for late payment, to ensure that the tax retains its real value and that there is no incentive to delay payment for pecuniary benefit.

### **Mr Shenton's evidence**

27. I had the opportunity to review Mr Shenton's evidence and would like to make some observations.

### **Appeal matters**

28. During their discussion about appeals, I think Mr Shenton mistakenly formed the impression that the Comptroller might be seeking to argue against the existence of the possibility of appeal against tax assessments and other tax decisions. The right of appeal against such things is fundamental and there is no question of change. However, I did not agree with GT's or EY's views that the Commissioners of Appeal were insufficiently independent for the reasons set out in my letter of 28 January 2019.

29. The question of a (new) right of appeal against a production power is however, more vexed. In my letter of 28 January 2019 (paragraph 29) I said that, "Given the use of Production Notices (such as an Article 16A Notice) is the "last resort" to tackle an unresponsive or obstructive taxpayer, there are good arguments for the present system. Investigations should be conducted quickly; and allowing taxpayers to challenge every request for information with a right of appeal can allow the most obstructive and those with deeper pockets to delay or even frustrate investigations." As I mention above, it is important to ensure that taxpayers who get their taxes wrong are not put in a position of advantage with regards to the majority of taxpayers who do pay the right amount of tax at the right time.

### **2017 Consultation on the Tax Compliance Framework**

30. In 2017, we received 23 written submissions in response to our consultation on a range of proposed modernisations including many of the provisions contained in the Draft RAL. A number of tax professionals requested that their submissions not be published so we simply produced a summary document.

31. As Mr Shenton has said, his submission and others touched on matters which were outside the scope of the consultation exercise. This was addressed in the summary document and neither tax policy officials nor Ministers have lost sight of the wider concerns and issues addressed which really argue for a significant "tax law re-writing exercise" covering much of the technical aspects of Jersey's tax law.

## **The Tax Policy Unit's work programme**

32. Annex B contains an indicative work plan covering the work of the Revenue Jersey's Tax Policy Unit; its International Tax team; and the dedicated policy principal embedded in our Revenue Transformation Team (who has led on the development of the Revenue Administration Law). The indicative plan seeks to demonstrate what further tax-law modernisation can take place over the next few years, assuming that the Tax Policy Unit continues to be funded at its present level. The plan also assumes that some aspects of the work can be "contracted out" subject to funding.

33. The work programme incorporates existing commissions from the Council of Ministers; the States Assembly (including CSSP); as well as the main technical needs of the tax profession; the known areas of interest of international players such as the OECD and the EU; and the requirements of Revenue Jersey itself. It also takes account of usual business activities such as management of the annual Budget process.

34. The Minister has yet to consider this work programme formally and the prioritisation of tax policy work is ultimately her prerogative. It will need to be understood and accepted by all stakeholders that changes to this work programme – once agreed – potentially require new resources; or re-deployment of existing tax resources; or the de-prioritisation of other tax policy projects.

**RICHARD SUMMERGILL**

## Annex A – Table showing comparative interest rates payable and paid by tax administrations

Jurisdiction	Late payment rate (annual)	Repayment rate	Notes
<b>United Kingdom</b>	3.5%	0.5%	Payment rate fixed at 2.5% over base rate  <a href="https://www.gov.uk/government/publications/rates-and-allowances-hmrc-interest-rates-for-late-and-early-payments/rates-and-allowances-hmrc-interest-rates">https://www.gov.uk/government/publications/rates-and-allowances-hmrc-interest-rates-for-late-and-early-payments/rates-and-allowances-hmrc-interest-rates</a>
<b>Ireland</b>	10% fiduciary taxes including VAT and PAYE  8% income tax, corporation tax and capital gains tax	4%	<a href="https://www.revenue.ie/en/tax-professionals/tm/collection/debt-management/guidelines-for-charging-interest-on-late-payment.pdf">https://www.revenue.ie/en/tax-professionals/tm/collection/debt-management/guidelines-for-charging-interest-on-late-payment.pdf</a>  <a href="https://www.revenue.ie/en/vat/interest-and-penalties/when-does-revenue-pay-interest/index.aspx">https://www.revenue.ie/en/vat/interest-and-penalties/when-does-revenue-pay-interest/index.aspx</a>
<b>New Zealand</b>	8.22%	1.02%	<a href="https://www.ird.govt.nz/how-to/debt/penalties/interest/interest-on-tax/interest-on-tax.html">https://www.ird.govt.nz/how-to/debt/penalties/interest/interest-on-tax/interest-on-tax.html</a>
<b>United States</b>	6%	6%	<a href="https://www.natptax.com/TaxKnowledgeCenter/FederalTaxInformation/Documents/IRS%20Interest%20Rates.pdf">https://www.natptax.com/TaxKnowledgeCenter/FederalTaxInformation/Documents/IRS%20Interest%20Rates.pdf</a>
<b>Australia</b>	8.94%	1.77%	<a href="https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/">https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/</a>  <a href="https://www.ato.gov.au/Forms/Interest-on-early-payments-and-overpayments-of-tax-2018/?page=1#What%20is%20the%20interest%20rate">https://www.ato.gov.au/Forms/Interest-on-early-payments-and-overpayments-of-tax-2018/?page=1#What is the interest rate</a>
<b>South Africa</b>	10%	10%	<a href="http://www.sars.gov.za/AllDocs/LegalDoclib/Rates/LAPD-Pub-IRT-2012-01%20-%20Interest%20Rate%20Table%201.pdf">http://www.sars.gov.za/AllDocs/LegalDoclib/Rates/LAPD-Pub-IRT-2012-01%20-%20Interest%20Rate%20Table%201.pdf</a>
<b>Canada</b>	6%	2% (corporates)  4% (non-corporates)	Late payment rate fixed at 4% above average interest rate on 90-day Treasury Bills  <a href="https://www.canada.ca/en/revenue-agency/news/newsroom/tax-tips/tax-tips-2018/interest-rates-for-the-first-calendar-quarter.html">https://www.canada.ca/en/revenue-agency/news/newsroom/tax-tips/tax-tips-2018/interest-rates-for-the-first-calendar-quarter.html</a>

## Annex B – Tax policy and administration priorities for 2019 and beyond

	Tax policy developments	International tax	Administrative matters
2019	<p><b>Review of the personal income tax regime</b></p> <p>High level recommendations will be presented to the States Assembly as part of the Government Plan 2020-23, due to be lodged in summer 2019. States Assembly to determine way forward.</p> <p>Work will continue through 2019 to develop the detail of policy reforms on personal taxation and the necessary legislative amendments.</p> <p>The ultimate aim is to enact legislation in 2020 that supports the 2019 policy decisions of the States Assembly, once all legal, implementation and administrative issues have been fully addressed.</p>	<p><b>Introduce legislation to support supervision and enforcement of the Common Reporting Standard</b></p> <p>It is proposed to consult on amendments to the CRS Regulations and guidance to support enforcement activity, including:</p> <ul style="list-style-type: none"> <li>• Introduction of nil reporting, with a corresponding registration requirement</li> <li>• Clarifying obligations for Financial Institutions on winding up or leaving the island</li> <li>• Extending information gathering powers to third parties</li> <li>• Enforcement mechanisms in cases of systemic breaches</li> </ul>	<p><b>Tax Appeals</b></p> <p>Tranche 2 of the Revenue Administration Law (RAL) will consider the following changes in 2019 (taking into account our international compliance obligations):</p> <ul style="list-style-type: none"> <li>• Further measures to emphasise the independence of the office of the Commissioners of Appeal. This will include a consultation on the publication of anonymised decisions of the Tax Appeals Commission</li> <li>• Extension of the Commissioners’ remit to consider justification for a compliance check/tax enquiry/tax investigation.</li> <li>• Introduction of objections – a lower-level appeal that can be closed without recourse to the Commissioners</li> </ul>
	<p><b>Personal tax residence</b></p> <p>Work will begin on examining Jersey’s personal tax residence rules. A detailed scoping exercise will be carried out and this will be shared with stakeholders.</p>	<p><b>Design of compliance and supervision regime over the Common Reporting Standard</b></p> <p>Continuation and further refinement of compliance activity in the CRS space</p>	<p><b>Revenue information powers and taxpayer record keeping</b></p> <p>Tranche 2 of the RAL will also reflect work being undertaken to update Revenue Jersey’s information powers and their interaction with taxpayer record keeping obligations.</p> <p>Article 16A notices will be included in this review.</p>
	<p><b>Review of interest relief rules</b></p> <p>A major review of Jersey’s interest relief rules will begin in 2019. The policy objectives for this review will be agreed by end 2019, in consultation with stakeholders.</p> <p>All existing concessions and reliefs that apply to interest will be included in this review.</p> <p>It is hoped to enact legislation to support this review in 2020.</p> <p>There may be scope for outsourcing certain technical aspects of this work.</p>	<p><b>Ensure Jersey obtains a positive rating in the Phase 1 peer review of its compliance with BEPS Action 14 (Dispute Resolution)</b></p> <p>Guidance for taxpayers on how to access the mutual agreement procedure in Jersey’s double tax agreements will be published.</p> <p>Revenue Jersey will continue to work to agree amendments to its network of double taxation agreements to bring them into compliance with the BEPS minimum standards.</p>	<p><b>The five year assessment window</b></p> <p>Consideration will be given to reducing the current five year window for raising amended assessments (except in cases of fraud or wilful default).</p>

**Prior year basis to current year basis**

A review will also be undertaken on the feasibility of transitioning prior year basis personal taxpayers to a current year basis.

**Ensure Jersey obtains a positive rating in the peer review of its compliance with BEPS Action 13 (Country by Country Reporting)**

Guidance and legislation will be amended to reflect feedback received in the course of the peer review.

**Review of all concessions and reliefs**

Revenue Jersey will prepare initial conclusions in Q1 on their internal review of concessions and reliefs. Feedback will be sought from the tax profession about these conclusions.

**Mutual Trading**

The results of a review on the taxation of profits of mutual trading will be presented to the States Assembly as part of the Government Plan 2020-23.

**Ensure Jersey obtains a positive rating in the peer review of its compliance with BEPS Action 6 (Treaty Abuse)**

Synthesised texts will be published showing the impact of the Multilateral Legal Instrument on Jersey's affected double taxation agreements.

The double taxation agreements with Guernsey and the Isle of Man will be amended to ensure compliance with the Action 6 report.

**Economic substance**

Work will continue with the EU Commission and OECD through 2019 to implement the new economic substance rules. This will also include consideration of issues around corporate tax residency and associated reporting obligations.

**The GST treatment of digital imports**

The GST treatment of digital imports will be reviewed and the results presented to the States Assembly as part of the Government Plan 2020-23.

There may be scope for outsourcing certain technical aspects of this work.

**Ensure Jersey obtains a positive rating in the peer review of its compliance with BEPS Action 5 (Harmful Tax Practices and Exchange of Tax Rulings)**

**2019 company tax return**

The 2019 corporate income tax return will be re-designed to reflect the new economic substance rules, as well as other requirements.

**Environmental taxes**

Environmental policy is a strategic priority for Government and a major review on how to deliver this priority begins in 2019. The role of taxation will be an important element of this review.

In particular, the future taxation of car ownership and usage will be examined and the results presented to the States Assembly as part of the Government Plan 2020-23.

**AEOI reporting system**

A review will be undertaken of the AEOI reporting system in order to ensure that it assists users to comply with their obligations, while also supports compliance activities and the generation of statistical information.

**Mandatory Reporting Regime**

Proposals will be brought to the States Assembly for a new Mandatory Reporting Regime for CRS avoidance, in line with the political commitment given in Dec 2018. Full consultation on the proposals will be undertaken with relevant stakeholders.

**Stamp duty and enveloped properties**

The results of the review on Stamp duty and enveloped properties will be presented to the States Assembly as part of the Government Plan 2020-23.

**Assistance in recovery of tax debt**

Undertake a review of the legal and systems changes required in order to support the agreement to assist in the recovery of UK tax debts

**A new Code of Conduct for Revenue audits**

Revenue Jersey will share work in Q3 of 2019 with the tax profession about guidance on Revenue compliance and audit policy.

**The role of taxation in the States' Housing Strategy**

The Tax Policy Unit will provide support (as required) to the Housing Development Board throughout 2019 on the role of fiscal policy in Jersey's housing strategy.

**Combined Employer Return**

Work is ongoing in 2019 on a review of the Combined Employer Return to include ITIS, Social Security Contributions, Manpower and Statistics information and to improve its functionality.

This will require changes to all relevant laws. The target is that businesses will be able to discharge all of their reporting to Government on relevant matters through a single return rather than the current multi-return requirements.

**Rates review**

Examination of the rates regime to determine whether Regulations are required for the revaluation of rateable values of property in Jersey.

**Legal responsibilities of Revenue Jersey**

Control and administration of social security contributions and customs/excise duties by Revenue Jersey and necessary legislative changes.

**Indicative work in 2020/21**

**Review of the personal income tax regime**

The finalisation of legislation and work on implementing the personal income tax policy determined by the States Assembly in 2019.

**Comprehensive review of CRS compliance**

Work to support a positive assessment of Jersey's compliance with the CRS by the OECD's Global Forum on Tax Transparency and Exchange of Tax Information

**Revenue Jersey access powers**

A consolidation of Revenue Jersey's taxpayer access powers will be carried out in 2020/21.

**Personal tax residence**

Completion of personal tax residence review and introduction of supporting legislation.

**Taxpayers' Charter**

Work will take place in consultation with the tax profession, to determine the best way forward as regards introducing the principles of a Taxpayers' Charter.

**Review of interest relief rules**

Detailed recommendations will be made to the States Assembly on the reform of interest relief rules.

**Information retention requirements**

Consolidation of information retention requirements under Revenue laws.

**Stamp duty and enveloped properties**

Legislation to be introduced.

**Economic substance**

Revenue Jersey will implement and then begin compliance activity on the new Economic Substance rules.

**A Code of Conduct for Revenue audits**

Revenue Jersey will continue work in 2020 and thereafter on guidance on compliance and

audit policy. This will be a collaboration that will continue as Revenue compliance and audit policy evolves.

**Domestic CRS**

A domestic CRS regime will be introduced in 2020/21, once the Revenue Jersey computer system is fully operational and all new Tax Identification Numbers have been issued to taxpayers.

**Consideration of introduction of iXBRL tagging for the largest companies**