

Grant Thornton – 21st June 2023

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

I have looked at each question raised, and my comments are below.

Most of the comments are a repetition of comments made in previous consultations.

1. Whether the Proposition is adequately aligned to realistically address its intended aims and to work in practice.

No.

This is simply a political manoeuvre. The political aim at the outset was to introduce independent taxation. Unfortunately, what we have been presented with, on a piecemeal basis, is not strictly independent taxation for existing taxpayers who are taxed as married couples.

The existence of the compensatory allowance means, in real terms, that true independent taxation will not exist for married couples, who mandatorily come within the proposals, until 2035 at the earliest.

The rationale for this statement is that in order to calculate the correct amount of tax due and the amount of any compensatory allowance, it is necessary for every qualifying married couple to know the total income of both spouses.

I am unable to reconcile how a person's liability to tax which is calculated by reference to their income and that of their spouse, can be considered as independent?

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

This legislation has been introduced piecemeal and is unfortunately incomplete. The introduction of legislation in this way seems endemic in relation to recent governments. There is no detailed legislation / guidance as to exactly how this will work in practice.

For example (and this list is by no means exhaustive) there is no detail surrounding:

How the income will be returned to Revenue Jersey ("RJ")?

For example, will each spouse complete a separate return and then RJ will bring the two returns together to calculate the compensatory allowance? or will Spouse A have to include spouse B's income on their return? If spouse A and spouse B have returned their income separately how do both spouse A and spouse B know that their assessments are correct as how will they be able to check any compensatory allowance without having knowledge of the other spouse's income? It is noted that paragraph 9 of Schedule 7 seems to give B the right to receive A's information, but I cannot see how this works in reverse. I am unable to see how the mandatory sharing of information can be described as independent.

It would appear that we may have two filings of the same information to calculate the tax whereby no one will be worse off. This would appear to be pointless except that it creates additional

administration and cost for RJ and taxpayers. The point concerning collection of tax has already been implemented.

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 actually work?

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 two returns?

Or

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

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?

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

3. Whether the proposed legislative approach and implementation is practically feasible and whether any practical challenges regarding the implementation are apparent.

Please see above, the proposal just creates additional administration and uncertainty whilst achieving no tax benefit.

4. Whether the proposed compensatory allowance process is sufficient to ensure that no one will be financially worse off.

There have always been winners and losers in relation to taxation and the proposal as drafted should ensure that no additional losers are created from existing taxpayers who qualify for the compensatory allowance.

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. For example, a person marrying on or after 1 January 2022 could be significantly worse off (tax wise) when compared to a person who married a day earlier (31 December 2021) even though their financial and family positions are identical.

5. Whether there are any concerns or risk in relation the compensatory allowance or its implementation.

As stated above, the existence of the compensatory allowance prevents a move to true independent taxation. There is not enough information as to how it will operate in practice to comment in detail except to say that its introduction will cause significant additional administration. Every person who could benefit from the compensatory allowance must now file a tax return. This will create thousands of “new” taxpayers.

6. The impact, both negative and positive of the proposed changes.

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. The proposals do create a level playing field in that previously disadvantaged married couples no longer suffer this penalty (generally these will be the people who have elected). However, for the majority it is just additional red tape to achieve nothing.

7. 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 (guaranteed for at least 8 years) this opportunity has been missed and the can simply kicked down the road until at least 2033.

8. Whether the proposed changes have been appropriately communicated to raise awareness of the implementation and its impact.

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

I am also not certain (as the actual process has not been agreed) 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 and will now have to complete a tax return to pay the same amount of tax as when they previously did not have to complete a return, clearly.

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.

Summary

It is accepted that if one was designing a new tax system then each person would be taxed independently. Unfortunately, the opportunity to design a new tax system has been missed and the proposals passed are simply an administrative political “fudge” which will create additional complexity and unwanted administration for thousands of people for at least the next ten years.

The issues with the computer system of RJ are well documented as are the shortcomings concerning certain areas of operation (payment statements as a simple example). The introduction of the compensatory allowance will create further complexity in the computational and collection programmes, and I have little confidence that the system will cope. In addition to running independent assessment calculations the system will also have to cope with the deferred 2019 liability payments.

Furthermore, the creation of thousands of new taxpayers, many elderly, is also likely to 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, that for many thousands of taxpayers they have simply put off making a firm decision to introduce truly independent taxation for another 10 years.

I will wait to see what happens when the mandatory allowance is removed and what new unsatisfactory compromise is proposed.

Regards

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