STATES OF JERSEY

DRAFT SOCIAL SECURITY (AMENDMENT OF LAW No. 10) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 3rd November 2015
by the Minister for Social Security

STATES GREFFE

Jersey

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REPORT

Background

Following States decisions in 2011 and 2013, the new long-term care (LTC) scheme was launched in July 2014. The scheme provides financial support towards the cost of long-term care. By the end of December 2014 1,147 people were receiving assistance through the new benefit.

The annual report for 2014 shows that nearly £17 million was paid out in the first 6 months of the scheme. The full year cost for 2015 is anticipated at £36 million and this cost will continue to increase from year to year in line with demographic pressures. The cost of the new scheme is met through the long-term care fund which receives contributions from the States and from individuals who have income high enough to pay income tax. Liability for the new LTC contribution started in January 2015.

Any adult who is insured under the Social Security (Jersey) Law 1974 and has a liability to pay income tax in a year has a liability to make a long-term care contribution for that year. The decision to align LTC contributions as far as possible with income tax allows for a single contribution system to be applied to both working age people and pensioners, and to take into account both earned and unearned income. Contributions are paid by those with higher incomes who are more likely to benefit from the introduction of the LTC scheme.

LTC liability is based on current year income for all taxpayers, regardless of whether they pay tax in arrears (for example, on self-employment or pension income) or through ITIS on a current year or prior year basis. The liability in 2015 is based on an LTC rate of 0.5%, which will increase to 1% in 2016.

Contributions are collected at the same time as income tax payments are made – this can be through direct billing, typically 2 payments a year, or through the ITIS system which makes deductions directly from wages. For marginal rate taxpayers, the LTC rate paid is reduced in line with the reduction made under the marginal rate rules.

Legislation

In November 2014, provisional combined effective rate notices were issued for 2015, incorporating a rate for income tax liability and a rate for the LTC contribution due in 2015. As usual, these notices were based on the most up-to-date information available to the Taxes Office at the time.

In the latter half of 2015, the normal annual cycle for income tax includes the issuing of assessment notices for the previous year, at which point any remaining tax liability for that year becomes payable. In the course of issuing these notices, 2 technical issues have been identified with the collection mechanism in respect of long-term-care contributions.

Assessment notices

As the long-term care liability is based on current year income, the collection of contributions during the year will always be based on an estimate and a final assessment cannot be issued during the year itself. This will be provided in the following year once the income for that year has been assessed.

Adapting existing income tax assessment notices to include the additional long-term-care contribution has resulted in final notices being sent for both long-term care contributions and income tax liability. Under the current legislation this is not correct, as the final notice for the 2015 long-term care contribution liability will be issued in 2016 when the individual's 2015 income has been assessed. There is a lack of clarity in that the long-term care contribution liability referred to in these 2014 assessment notices is in respect of an estimate of that final liability.

The draft Regulations establish that assessment notices may include either estimates of LTC liability or the final LTC liability and also confirm that all assessments issued in 2015 in respect of long-term care contributions for 2015 are estimates. The design of the assessment notices will be improved for 2016 in advance of a major redesign of the Taxes Office IT systems, which is a key component of the public sector reform programme to develop e-gov services.

Combined effective rate

The majority of wage earners make regular payments towards their income tax liability throughout the year through the ITIS system. Each employee is allocated an ITIS rate, which is used by the employer to make deductions from each wage payment.

From the beginning of 2015, a combined ITIS rate has been introduced that incorporates both the liability for income tax and the new liability for the long-term care contribution. The income tax part is calculated by comparing income tax liability and taxable income to produce a percentage rate of between 0% and 20% (NB – the final rate can be higher than 20% if there income tax arrears from previous years).

Amended legislation was introduced to calculate a long-term care ITIS rate following a similar pattern. However, a detailed review of the law has identified an error in the legal description of the calculation, which does not work as intended.[1]

The draft Regulations clarify the method used to calculate the estimate of LTC liability that will be used during the year. The estimate will use an estimate of current year income for taxpayers paying ITIS on a current year basis; for taxpayers paying by instalment or using ITIS on a prior year basis, the estimate will be based on the most up-to-date information available. This will be either one or 2 years before the current year, depending on whether the income tax assessment for the previous year has been completed.

For example, in 2016: the estimate of LTC liability in 2016 will be based on –

- CYB – estimate of 2016 income.
- PYB / instalments – actual income from 2015, once 2015 income tax has been assessed.

[1] The provisional effective rate looks back to the LTC liability for the previous year, when in 2015 there is not a previous year's liability to refer to and the effective rate calculations do not make it clear that they are using an estimate of the LTC liability.

- PYB / instalments – actual income from 2014, if 2015 income tax has not yet been assessed.

The adjustments for marginal rate calculations and the upper earnings limit use the parameters current during the year of the income being used in the calculation. Once the LTC rate is identified, it is added to the income tax rate and rounded up to the next whole number, to create the combined ITIS rate.

If approved, the draft Regulations will take effect from the day after the day they are made.

In summary, the proposed Regulations –

- Provide for assessment notices to include estimates of LTC liability or final LTC liability.
- Confirm that all assessments for LTC contributions in 2015 are estimates of the final LTC liability for 2015.
- Introduce an improved explanation for calculating the LTC part of the combined effective rate.

Financial and manpower implications

There are no financial or manpower considerations in respect of these draft Regulations. The introduction of a 0.5% LTC contribution rate is estimated to yield an income currently estimated at between £7 million and £8 million to the long-term care fund in 2015.

Explanatory Note

These Regulations revise the arrangements for collection of an insured person's long-term care ("LTC") contribution.

Regulation 1 amends the Social Security (Jersey) Law 1974 (the "1974 Law"). The amendments are primarily to Schedule 1D to the 1974 Law, which makes provision for the collection of LTC contributions.

Paragraph 2 of Schedule 1D is amended in 2 ways –

1. Currently, the Comptroller is required to serve notice of the amount of a person's LTC contribution at the same time that he or she serves a notice of assessment of income tax on the person. In the future, the Comptroller will have a discretion as to whether he or she serves notice of the amount of a person's LTC contribution at the same time as a notice of assessment of tax. As now, the notice of assessment of tax and the notice of the amount of an LTC contribution need not relate to the same year.

2. The notice of the amount of a person's LTC contribution may be an estimate of that amount or the final amount. In both cases, the amount notified becomes due and payable.

Paragraph 2A is then added to Schedule 1D to specify how an estimate of a person's LTC contribution for a year is to be calculated. The rules in Schedule 1C to the 1974 Law are used, for the purposes of the calculation, with the following modifications –

1. The person's gross and taxable income, the upper annual income limit and the person's entitlement (if any) under Article 92C of the 1961 Law from the year preceding the LTC contribution year are used to calculate the estimate for the purposes of –

   (a) serving a notice containing an estimated contribution amount, under paragraph 2 of Schedule 1D as amended, in the case of a person who does not pay instalments of income tax on a current year basis; and

   (b) calculating the LTC contribution effective rate of a person whose ITIS rate is calculated by reference to his or her tax liability for the preceding year.

2. The person's gross and taxable income, the upper annual income limit and the person's entitlement (if any) under Article 92C of the 1961 Law from 2 years before the LTC contribution year are used to calculate the estimate for the purposes of –

   (a) calculating a person's April instalment (if any) of his or her LTC contribution; and

   (b) calculating the LTC contribution effective rate of a person whose ITIS rate is calculated by reference to his or her tax liability from 2 years earlier.

3. In the case of a person who pays instalments of income tax on a current year basis and is not subject to a provisional ITIS effective rate, the person's estimated gross and taxable income and entitlement (if any) under Article 92C of the 1961 Law for the current year are used for the purposes of –

(a) serving a notice containing an estimated contribution amount, under paragraph 2 of Schedule 1D as amended; and

(b) calculating the person's LTC contribution effective rate.

4. In any case where a person's ITIS rate is calculated by reference to estimated amounts, the estimate of the person's LTC contribution for a year will also be calculated using estimated amounts.

Paragraph 4 of Schedule 1D is then amended so that an estimate of the amount of a person's LTC contribution for a year is used to determine the person's LTC contribution effective rate for that year.

Regulation 1 also inserts Article 54D in the 1974 Law, to provide that any notice of a person's LTC contribution issued in 2015 is taken to be an estimate of that amount, served and calculated under paragraphs 2 and 2A Schedule 1D as amended by these Regulations.

Regulation 2 amends Article 49B of the Income Tax (Jersey) Law 1961 (the "1961 Law"). Article 49B provides for the collection of LTC contributions by the Comptroller of Taxes, on behalf of the Minister for Social Security. The provision made by Article 49B includes modifications of Articles 41A and 41C of the 1961 Law.

Article 41A as modified makes provision for the payment of an April instalment of a person's LTC contribution. This Regulation amends the modification consequentially upon the introduction of paragraph 2A in Schedule 1D to the 1974 Law.

Article 41C of the 1961 Law as modified provides for a person's ITIS effective rate and LTC contribution effective rate to be added together and rounded up, to become a combined effective rate. This Regulation amends the modification so as to remove a reference to an LTC contribution rate that is provisional. The reference is no longer required, as the necessary adjustment to the rule for calculating the person's LTC contribution effective rate is instead achieved by the rule now added for calculating the person's estimated LTC contribution

Regulation 3 provides for the citation and commencement of these Regulations.

Jersey

DRAFT SOCIAL SECURITY (AMENDMENT OF LAW No. 10) (JERSEY) REGULATIONS 201-

Made	*[date to be inserted]*
Coming into force	*[date to be inserted]*

THE STATES, in pursuance of Articles 50 and 51 of the Social Security (Jersey) Law 1974[1], have made the following Regulations –

1 Social Security (Jersey) Law 1974 amended

(1) In this Regulation, a reference to an Article or Schedule by number only is a reference to the Article or Schedule of that number in the Social Security (Jersey) Law 1974[2].

(2) After Article 54C there shall be inserted the following Article –

"54D Transitional provision for LTC contributions in 2015

(1) Any notice issued by the Comptroller in 2015 in respect of a person's LTC contribution for that year shall be taken to be a notice of the estimate of that amount served and calculated under paragraphs 2 and 2A of Schedule 1D as amended by the Social Security (Amendment of Law No. 10) (Jersey) Regulations 201-[3].

(2) In paragraph (1) 'Comptroller' has the same meaning as in Schedule 1D.".

(3) In Schedule 1D –

(a) in paragraph 2(1) –

(i) for the word "shall," there shall be substituted the word "may,",

(ii) at the end of the sub-paragraph there shall be added the words "or an estimate of that amount";

(b) in paragraph 2(2) after the words "an LTC contribution" there shall be inserted the words "or an estimate of an LTC contribution";

(c) in paragraph 2(3) after the word "pay," there shall be inserted the words "or an estimate of the person's LTC contribution,";

(d) after paragraph 2 there shall be inserted the following paragraph –

"2A Estimate of LTC contribution

(1) An estimate of the amount of a person's LTC contribution for a year (the 'payment year') shall be calculated in accordance with this paragraph.

(2) Schedule 1C shall apply as if references in it to –

(a) the upper annual income limit; and

(b) subject to sub-paragraph (5), the person's gross income and taxable income, and the person's entitlement to a reduction under Article 92C of the 1961 Law,

were references to those amounts or that entitlement –

(i) for the purposes described in sub-paragraph (3) – for the year preceding the payment year;

(ii) for the purposes described in sub-paragraph (4) – for the year that is 2 years before the payment year;

(iii) for the purposes described in sub-paragraph (5) – for the payment year.

(3) The purposes referred to in sub-paragraph (2)(i) are –

(a) serving a notice under paragraph 2 of an estimate of the amount of the LTC contribution of a person who is not a new taxpayer;

(b) calculating the LTC contribution effective rate of a person who is not a new taxpayer and whose ITIS effective rate is calculated under Article 41C(2) of the 1961 Law;

(c) calculating the LTC contribution effective rate of a new taxpayer whose ITIS effective rate is calculated under Article 41C(5) of the 1961 Law.

(4) The purposes referred to in sub-paragraph (2)(ii) are –

(a) calculating an estimate of the amount of a person's LTC contribution for the purposes of Article 41A of the 1961 Law as modified by Article 49B of that Law;

(b) calculating the LTC contribution effective rate of a person who is not a new taxpayer and whose ITIS effective rate is calculated under Article 41C(5) of the 1961 Law.

(5) The purposes referred to in sub-paragraph (2)(iii) are –

(a) serving a notice under paragraph 2 of an estimate of the amount of the LTC contribution of a new taxpayer;

(b) calculating the LTC contribution rate of a new taxpayer whose ITIS effective rate is calculated under Article 41C(2) of the 1961 Law as modified by Article 41H of that Law.

(6) Where the calculation is to be made for the purpose of calculating a person's LTC contribution effective rate, in the case of a person whose ITIS effective rate is calculated by reference to his or her estimated liability to income tax for a year, the amounts referred to in sub-paragraph (2)(b) shall also be estimates.";

(e) in paragraph 4 –

(i) in sub-paragraph (2), for clause (a) of the defined sum "L", there shall be substituted the following clause –

"(a) the employee's estimated LTC contribution for the payment year, calculated in accordance with paragraph 2A;",

(ii) in sub-paragraph (2) at the end of the defined sum "I" there shall be added the words "or, as the employee's case requires, Article 41C(2) as modified by paragraph (5) of that Article or Article 41H(10)",

(iii) sub-paragraphs (3) and (4) are deleted.

2 Income Tax (Jersey) Law 1961 amended

(1) In this Regulation, a reference to an Article or Schedule by number only is a reference to the Article or Schedule of that number in the Income Tax (Jersey) Law 1961[4].

(2) In Article 49B(2)(b) for clause (ii) of the substituted paragraph (2)(b) there shall be substituted the following clause –

"(ii) the LTC portion of the instalment, being 50% of the person's estimated LTC contribution for the year in which the instalment is due calculated in accordance with paragraph 2A(2)(ii) and (4)(a) of Schedule 1D to the 1974 Law (disregarding any amount paid by way of deduction under Article 41B or 41E).".

(3) In Article 49B(4)(c), in the substituted paragraph (4)(a)(ii), for the words "a provisional" there shall be substituted the word "the".

(4) Schedule 1A is revised in accordance with the amendments made by this Regulation.

3 Citation and commencement

These Regulations may be cited as the Social Security (Amendment of Law No. 10) (Jersey) Regulations 201- and shall come into force on the day after the day they are made.

[1] *chapter 26.900*
[2] *chapter 26.900*
[3] *P.136/2015*
[4] *chapter 24.750*