

Deputy Moz Scott
Chair
Economic and International Affairs Scrutiny Panel
By email

23rd of May 2023

Dear Chair,

P.28/2023 Draft Taxation (Exchange of Information – Amendment) (Jersey)
Regulations 202-

Thank you for your letter on the 16th of May 2023. The Minister for External Relations has asked me to lead on this matter in my capacity as Assistant Minister for External Relations and also in my capacity as the Competent Authority for tax-information exchange matters.

I should be happy to offer the Panel a private briefing on the draft Regulations.

You asked a number of questions which I answer below.

1. Has the Organisation for Economic Co-operation and Development specifically commented upon the example cases used within the proposition of the proposed Regulations?

The Government of Jersey has discussed this issue with the OECD Secretariat. The OECD Secretariat understands the rationale underpinning the draft Regulations, which seek to bring our domestic legislation closer to the international standard as set out in the relevant OECD texts and as the Government and industry has generally understood matters.

The draft Regulations largely duplicate existing statute but now seek to make absolutely clear that “tax information” encompasses information that would help a tax authority to determine matters of tax residency and also more clearly stipulates that tax residency does not have to be determined as a pre-requisite for exchanging other information. So, for example, the phrase “the determination or assessment of the liability of the person to such taxes” has been added.

The OECD has welcomed the Government of Jersey’s proposed approach to provide additional legal clarity on this matter.

2. What are the implications of being regarded as “non-compliant” to which the Report accompanying the proposition of the proposed Regulations refers?

As stated in the report accompanying the Proposition, the OECD Secretariat shares the Government’s view that the effect of the recent judgment of the Royal Court has put Jersey

out-of-step with the international standard. Corrective action is therefore necessary to avoid the risk of being assessed “non-compliant”.

Jurisdictions which are assessed non-compliant run the risk of being included in the so-called “blacklists” of some jurisdictions which could damage the ability of some of Jersey’s Financial Institutions to operate effectively in Jersey, potentially damaging our economy. For example, these assessments are integrated as a criterion within the EU’s list of non-cooperative tax jurisdictions (“EU Blacklist”).

The consequences of blacklisting will vary depending on the jurisdiction, but tend to range from direct measures (for example, the application of punitive levels of taxation on payments made to and received from the listed jurisdiction) to indirect ones (such as rules preventing publicly-funded bodies from investing in the listed jurisdiction). In addition, many listed or otherwise regulated entities such as pension funds are not permitted to invest in listed jurisdictions. Jersey’s last experience of blacklisting for perceived non-compliance with exchange of information standards, by France, in 2013, demonstrated potentially serious economic implications for the island and its residents.

3. What protections will be in place to ensure the proposed Regulations are not used by tax authorities to enable speculative requests for information that have no apparent nexus to an open inquiry or investigation?

As you can see in the OECD Commentary on Article 26, the scope for exchange of information is cast very wide but specifically excludes so-called “fishing expeditions” which might be described as those which have no apparent nexus to an open enquiry or investigation in the Requesting Jurisdiction.

The obligation falls upon the Comptroller of Revenue, as Delegated Competent Authority, to satisfy himself that requests from overseas Governments are valid. Requesting Jurisdictions are required to provide sufficient information to the Comptroller to enable him to be satisfied in this respect. If he is not satisfied, a Request would be rejected. However, in cases of doubt, it is more usual for the Comptroller to seek additional information from Requesting Jurisdictions to satisfy himself that requests are both valid and can be clearly expressed to those who receive Production Notices requesting information.

Additionally, persons upon whom a Production Notice is served have the right to seek Judicial Review challenging the validity of any aspect of a Notice.

4. What will the impact of the proposed Regulations on the finance industry be?

In the view of the Government, the draft Regulations simply further clarify the existing international standard which we believe most Financial Institutions do understand. As such, we do not expect any real impact on the current operation of the system of Exchange of Information on Request; and, in reality, most exchanges occur without objection.

Conversely, if the draft Regulations were not supported by the Assembly, Jersey would remain out-of-step with the international standard for Foreseeable Relevance which will hamper the EOIR process. We would expect to see more legal challenges to Production Notices and increased risk to Jersey’s reputation as a tax-transparent jurisdiction.

5. What consultation with the Island's finance industry and legal profession has been undertaken?

The draft Regulations have been shared with some of the key stakeholders in the finance and legal sectors of our economy. It was not appropriate, on this occasion, to conduct a formal consultation given the reason for making these Regulations is simply bring them close to the clear meaning of the international standard. It is vitally important for the success of our finance sector that our domestic legislation properly reflects the international standard, as explained in the Report accompanying the Proposition.

Kind regards,

A handwritten signature in grey ink, appearing to be 'I. Gorst', with a long horizontal stroke extending to the right.

Deputy Ian Gorst
Assistant Minister for External Relations