

STATES OF JERSEY



DRAFT BUDGET STATEMENT 2009 (P.158/2008): THIRD AMENDMENT (P.158/2008 Amd.(3)) – COMMENTS

**Presented to the States on 1st December 2008
by the Minister for Treasury and Resources**

STATES GREFFE

COMMENTS

The Minister opposes this amendment because it raises a number of unintended inequities and problems within the existing interpretation of the Income Tax legislation which are explained at length in the supporting report.

Furthermore, the amendment would also result in income tax revenues being reduced and the States' financial position worsened by an estimated £400,000 in 2010 and subsequent years.

In last year's budget the States agreed to the Minister for Treasury and Resources' proposal to increase allowances for those parents with children in higher education from £5,000 to £6,000 per child, an increase of 20%. This was to provide additional help to reflect the additional costs of higher education.

The Minister would also wish Members to be aware that parents with a child on a typical 3 year degree course will actually receive 4 years of the £6,000 annual allowance. This is because the current interpretation allows a full year's allowance to be claimed for Year 1 of that degree where the "child" would only attend for one term, typically starting in September. In Year 4 when the "child" would only attend for 2 terms, typically until June of that year, a further full year's allowance may be claimed.

The Minister will be opposing this amendment for the reasons stated above and also in the attached report. However, the Minister is prepared to commit to a review being carried out in conjunction with the new Minister for Education, Sport and Culture to consider ways in which support can be provided to mitigate the increased costs faced by parents with children in higher education. The intention would be to identify proposals which could be brought forward in the 2010 Budget.

**Supporting information to the Comment of
the Minister for Treasury and Resources**

Introduction

Child allowance is governed by Article 95 of the Income Tax (Jersey) Law 1961.

Up to the year of assessment 2007 the maximum relief was –

- £2500 for a child receiving full-time instruction at any school, and
- £5000 for a child receiving full-time higher education.

From the year of assessment 2008 the maximum relief is –

- £3000 for a child receiving full-time instruction at any school and
- £6000 for a child receiving full-time higher education.

Article 95(3) details the restriction on lower and higher child allowance, as follows–

In the case of a child who is entitled in the child’s own right to an income exceeding £3,000 a year, the deduction under this Article in respect of the child shall be reduced, in the case of a deduction referred to in paragraph (1)(a), (being a child receiving full-time instruction at any school) by the amount of the excess and, in the case of a deduction referred to in paragraph (1)(b), (being a child receiving full-time higher education) by £3 for every £2 of the excess.

This means that, for 2008 onwards, once a child income exceeds £5,999 in respect of a child at school and £6,999 for a child receiving higher education, the child allowance is lost.

The definition of a child for the purposes of the income tax child allowance is “...child includes a step-child and an illegitimate child whose parents have married each other after the child’s birth...”.

The issues that need to be considered carefully, and which militate against the Deputy’s amendment, and why it is opposed, are as follows:

1. Inequitable treatment

The proposal is restricted to those children in higher education for which Higher Child Allowance is due. It excludes, therefore, similar provisions for children for which Lower Child Allowance relief is given, i.e. those who attend and leave secondary school.

It is not understood why the proposal should be restricted to children in higher education. The relief for child allowance already takes into account the expected increased financial cost for those who attend higher education, as it allows relief of twice the amount for that of a child in school.

In normal circumstances a child will, upon leaving school, look for gainful employment. It seems inequitable to favour in this instance parents with children in higher education and to penalise those parents who have children who leave secondary school.

It would seem the only way to equitably apply a rule of ignoring a child’s income in the final year of education would be to do so for all children, in both secondary and higher education. This would avoid discrimination.

However, such an amendment would –

- significantly support more wealthy taxpayers whose child allowance is currently restricted due to payment to the minor through trust arrangements – see the tax planning section that follows;
- be of quite significant cost to the States of Jersey as full allowances would be given without reference to the child's income.

2. Tax planning if amendment adopted – inequity

In 1994, Higher Child Allowance came into force. It was introduced to benefit all parents who sent their children to Universities and the like. Up until then, the ones who benefited were parents who had access to tax planning advice. They were able to execute a deed of covenant (a so called Educational Covenant) in favour of their children, who, in turn, were able to claim a tax refund.

The introduction of the Higher Child Allowance closed the tax planning route via deed of covenants, as that was being abused, and gave the increased Higher Child Allowance to all parents.

Notwithstanding this, some of the more wealthy parents and families of the Island still use vehicles to pay their children money. Trusts exist which pay income to minors. The income is normally sizeable, and often the Lower or Higher Child Allowance will be extinguished by the level of income paid out of the Trust.

With the current proposal, it would be possible for Trustees to tax plan further. They could easily do this by paying the child after the date of graduation. This would then give the parent of the child full Higher Child Allowance which they otherwise would not have received under the current provisions of the Law.

3. Continuing Further Education – further inequity

Some students continue in further education after an ordinary degree graduation. They may undertake, for example, further study for a Masters, MBA, teaching qualification, doctorate, etc. In these cases, a student may have 2 or more graduations during their student life, and the parent may potentially benefit from the proposed amendment on more than one occasion and in more than one year of assessment, despite the child earning in these different years of assessment.

4. Parental Contribution during years at University – potentially irrational outcome of proposed amendment

It does not appear rational to restrict the proposed amendment to the final year in University. Parental costs are more likely to be higher in the preceding years, especially the first year of attending University, when the initial financial cost of sending a child to University is likely to be a severe burden on the parents.

Furthermore, a parent with, say, one child in Year 1 or 2 of University may have their Higher Child Allowance restricted due to the summer/seasonal work undertaken by that child. However, they may also have an older child graduating that year, who may earn after leaving substantially more than his younger sibling, yet the parents would receive full Higher Child Allowance for the child who has earned more during his final year at University. Such an outcome would seem illogical.

5. Date of Graduation, and other potential legal and administrative difficulties

It is possible that the date of graduation could be several months after the child has left University. The child may have started work and be earning a regular income during this interregnum. In that instance the allowance may be extinguished completely. How is this matter to be resolved?

It is possible that the child may not actually graduate in their final year. It is also possible that the child may not complete their University course, e.g., they 'drop out' or cease studies due to family, etc, circumstances. How are these matters to be resolved?

The proposals would appear to bring into question the treatment of Gap Year students who, after their degree, took such a Gap Year before continuing in further education, e.g., for a Masters degree and the like. A situation could arise where, having worked throughout a Gap Year, full Higher Child Allowance would be given in the year of finishing the degree but no allowance would be due in the year of starting another course. How is this matter to be resolved?

These types of issues, and other currently unforeseen issues, would cause further ambiguity, complications and potential contentious appeals before the Commissioners of Appeal and the Royal Court, for both the taxpayer and the Income Tax Office.

6. Open University

Degrees and MBAs are obtained by many students through the Open University and other faculties providing distance learning. These are often undertaken by more mature students who are working in part-time or seasonal jobs. It would seem inequitable that parents (who may provide no financial support to such a child, have an income far less than their child, and not have such a child living with them) of such mature students could, if the circumstances fitted, be eligible to claim for full Higher Child Allowance in the final year of study.

For the reasons outlined above, this proposed amendment is opposed.

Point of Clarification

One point made by the Deputy ought to be clarified. He intimates that the parent of a child who, after University, returns to Jersey, is discriminated against compared to a child who, say, stays in the United Kingdom or works abroad. He purports that the income of the latter may not be disclosed by the parent. Such an action by the parent – making an incorrect statement of a child's income whilst claiming child allowance – would be an infraction of the Income Tax (Jersey) Law 1961 and would lay the parent open to action under Article 137 of the said Law for negligently or fraudulently making an incorrect statement.