

STATES OF JERSEY



Jersey

DRAFT INCOME TAX (AMENDMENT – STAGE 1 OF INDEPENDENT TAXATION) (JERSEY) LAW 202-

**Lodged au Greffe on 3rd August 2021
by the Minister for Treasury and Resources
Earliest date for debate: 14th September 2021**

STATES GREFFE



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European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources, the provisions of the Draft Income Tax (Amendment – Stage 1 of Independent Taxation) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy S.J. Pinel of St. Clement**
Minister for Treasury and Resources

Dated: 28th July 2021

REPORT

Introduction

This Proposition introduces the Draft Income Tax (Amendment – Stage 1 of Independent Taxation) (Jersey) Law 202- (the “Draft Law”). The current system of married couples’ taxation (MCT) has been part of Jersey’s tax law since the introduction of income tax in 1928. Few jurisdictions around the world continue to impose this system of taxation on its citizens.¹

The introduction of Independent Taxation would mark a pivotal moment in the ongoing reform of Jersey’s tax system and would afford equal rights and responsibilities to all individuals, regardless of their marital status, gender or age.

Background

On 8th March 2019, the Minister for Treasury and Resources (the “Minister”) announced her intention to end the taxation of married couples and couples in civil partnerships. This followed a public consultation, which asked Islanders for their views on the way married and unmarried couples are taxed. The results of this consultation found Independent Taxation to be the preferred basis of taxation for most Islanders.²

The [Government Plan 2021-24](#) made a commitment to begin to introduce Independent Taxation for the year of assessment 2022.

Proposal

In February 2021, the Revenue Policy Development Board agreed that Independent Taxation should be introduced in phases, beginning in year of assessment 2022, and concluding no later than year of assessment 2027.

This first phase will include:

1. Individuals in Jersey who marry or enter into civil partnerships **after** 31st December 2021;
2. Couples who are married or in civil partnerships who arrive in Jersey **after** 31st December 2021; and
3. Any couples who are married or in civil partnerships who had elected for separate assessments for the year of assessment 2020 and have subsequently elected to move into Independent Taxation.³

Individuals who were separately assessed for year of assessment 2020 (<1,300 individuals) will form a pilot study group to test communications and support and gather customer feedback to inform phases two and three.

The Draft Law seeks to amend the [Income Tax \(Jersey\) Law 1961](#) (the “ITL”) to allow Independent Taxation to be implemented for the above individuals.

Any individuals who marry or enter into a civil partnership after 31st December 2021 will continue to be taxed independently.

¹ MCT was abolished in the UK nearly 30 years ago

² [Personal Tax Reforms \(P.119.2019\)](#), Annex B, pp.20-21

³ The existing separate assessment regime gives couples privacy over their tax affairs but does not impact their overall liability to tax.

Independently taxed couples

The Draft Law introduces the concepts of “independently taxed spouses” and “independently taxed civil partners”. Independently taxed couples are those who fall within one of the three categories detailed above.

The Draft Law amends the ITL so that independently taxed spouses and civil partners receive the same income exemption as unmarried people.

There are special provisions within the ITL that apply only to married persons and civil partners.⁴ The Draft Law amends those provisions so that they **do not** apply to independently taxed spouses or civil partners.

Until later phases of Independent Taxation are introduced, the special provisions will continue to apply to all remaining spouses and civil partners, unless an election is made (see below).

Electing for Independent Taxation

Couples who were separately assessed for the year of assessment 2020, due to a previous election, will be able to elect to be taxed independently from year of assessment 2022. The Draft Law inserts new Articles allowing these couples to elect by 29th October 2021.

The Draft Law also introduces new articles to allow all married individuals and civil partners who wish to elect for Independent Taxation – from year of assessment 2023 onwards – to do so by 29th July 2022. These individuals will form the second phase of the introduction of Independent Taxation.

Elections must be made by both partners and are irrevocable.

Children

The Draft Law does not make any changes to the legislation covering child allowances. Existing practices for unmarried couples with regards to the allocation of child allowances will be extended to independently taxed couples. This includes the ability to have the allowance split in accordance with individuals’ preferences, with most parents opting for an equitable 50/50 split.

Modifications are made to the ITL to ensure that any individual is not able to benefit from more relief than the amount of childcare paid for by the individual.⁵ This puts beyond doubt the existing intention of the law for a fair apportionment of relief according to the individual’s contribution to childcare costs.

Phases two and three

Additional legislative changes will be required for the implementation of the later phases of Independent Taxation. This will include the introduction of a new allowance to mitigate any potential financial impact.

Exchequer impact

Current analysis suggests that when Independent Taxation is fully implemented it will cost the Exchequer around £4 million. The Minister is currently considering options to offset these costs.

⁴ Parts 16 & 16A of the ITL

⁵ Article 92B of the ITL

Financial and manpower implications

The development of first phase of Independent Taxation has been achieved within existing resources. There are no significant system changes required to implement phase one. The cost involved in implementing major system changes required for phases two and three will be reported in due course. It is envisaged at this time that the overall costs of implementing Independent Taxation will be in the region of £1.25 to £1.5 million.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT**Human Rights Notes on the Draft Income Tax (Amendment – Stage 1 of Independent Taxation) (Jersey) Law 202-**

These Notes have been prepared in respect of the Draft Income Tax (Amendment – Stage 1 of Independent Taxation) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law if passed will facilitate the transition of all taxpayer in Jersey to independent taxation.

The draft Law requires those who were marry or enter into a civil partnership after 31st December 2021 to be independently taxed. It also provides for elections by taxpayers to be independently taxed to be irrevocable where they are made under the new Articles 121C, 121D, 122DA and 122DB.

There is no reason to consider that the provisions made under the draft Law - which are administrative in nature and do not create a new charge to tax - engage the ECHR however it is noted in any event that States are given a wide margin of appreciation in the administration of taxes. In view of this, the draft Law is considered compatible with the ECHR.

EXPLANATORY NOTE

This Law, if adopted, would amend the Income Tax (Jersey) Law 1961 (the “1961 Law”) to require certain spouses and civil partners to be taxed independently.

Article 1 provides that this Law amends the 1961 Law.

Article 2 introduces 2 new terms into the 1961 Law – “independently taxed civil partner” and “independently taxed spouse”. These terms capture people who marry or enter into a civil partnership after 31st December 2021, who arrive in Jersey after that date, or who elect to be independently taxed. Article 2 also amends the definition of “earned income” to prevent the income of an independently taxed civil partner or spouse from being part of the earned income of their civil partner or spouse.

Article 3 amends the new definitions of “independently taxed civil partner” and “independently taxed spouse” a year after they come into force to ensure that they will apply to people who can elect to be independently taxed under new Articles 121D and 122DB of the 1961 Law (inserted by Articles 10 and 13 of this Law).

Article 4 removes the requirement for people in receipt of taxable income belonging to others to provide details of whether the person who owns the income is a spouse A, spouse B, civil partner A or civil partner B.

Article 5 removes the requirement for an independently taxed civil partner or spouse to provide the Comptroller with information about their civil partner’s or spouse’s employment.

Article 6 ensures that independently taxed civil partners and spouses receive the same threshold for exemption for income tax as people who are not married or in a civil partnership.

Article 7 limits an individual’s increase to their tax exemption threshold for child care payments to the amount that the individual pays for child care. This change is not limited to independently taxed civil partners or spouses, but is intended to clarify the current legal position for all taxpayers.

Article 8 amends the heading to Part 16 of the 1961 Law to clarify that it applies to only certain married people, not to all married people.

Article 9 inserts a new Article 120A into the 1961 Law. New Article 120A states that Part 16 does not apply to independently taxed spouses.

Article 10 inserts new Article 121C into the 1961 Law. The new Article allows spouses who are separately assessed for the 2020 year of assessment to elect to be independently taxed from the 2022 year of assessment onwards.

Article 11 inserts new Article 121D into the 1961 Law. The new Article allows all spouses to elect to be independently taxed from the 2023 year of assessment onwards.

Article 12 amends the heading to Part 16A of the 1961 Law to clarify that it applies to only certain civil partners, not to all civil partners.

Article 13 inserts a new Article 122AB into the 1961 Law. New Article 122AB states that Part 16A does not apply to independently taxed civil partners.

Article 14 inserts new Article 122DA into the 1961 Law. The new Article allows civil partners who are separately assessed for the 2020 year of assessment to elect to be independently taxed from the 2022 year of assessment onwards (Article 122DA).

Article 15 inserts new Article 122DB into the 1961 Law. The new Article allows all civil partners to elect to be independently taxed from the 2023 year of assessment onwards.

Article 16 gives the name of this Law and provides that it comes into force on 1st January 2022, except for Article 3, which comes into force on 1st January 2023 and Articles 10 and 14, which come into force 7 days after this Law is registered.



Jersey

DRAFT INCOME TAX (AMENDMENT – STAGE 1 OF INDEPENDENT TAXATION) (JERSEY) LAW 202-

Contents

Article

1	Income Tax (Jersey) Law 1961 amended	13
2	Article 3 (general provisions as to interpretation) amended from 1st January 2022.....	13
3	Article 3 (general provisions as to interpretation) amended from 1st January 2023.....	14
4	Article 18 (delivery of list by persons in receipt of taxable income belonging to others) amended	14
5	Article 41H (requirement to provide information when entering or resuming employment or sub-contracting) amended	14
6	Article 92A (threshold for exemption for income tax) amended.....	15
7	Article 92B (increase in exemption threshold for child day care) amended	15
8	Part 16 heading amended	15
9	New Article 120A (application of this Part) inserted	15
10	New Article 121C (election by spouses for independent taxation from 2022) inserted	15
11	New Article 121D (election by spouses for independent taxation from 2023) inserted	16
12	Part 16A heading amended.....	16
13	New Article 122AB (application of this Part) inserted	16
14	New Article 122DA (election by civil partners for independent taxation from 2022) inserted	16
15	New Article 122DB (election by civil partners for independent taxation from 2023) inserted	17
16	Citation and commencement.....	17



Jersey

DRAFT INCOME TAX (AMENDMENT – STAGE 1 OF INDEPENDENT TAXATION) (JERSEY) LAW 202-

A LAW to amend the [Income Tax \(Jersey\) Law 1961](#) to provide for the first stage of independent taxation for people who are married or in a civil partnership.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 [Income Tax \(Jersey\) Law 1961](#) amended

This Law amends the [Income Tax \(Jersey\) Law 1961](#).

2 **Article 3 (general provisions as to interpretation) amended from 1st January 2022**

- (1) In Article 3, in the definition “earned income”, paragraph (a), –
 - (a) after “spouse” there is inserted “(other than an independently taxed spouse)” in both places;
 - (b) after “civil partner” there is inserted “(other than an independently taxed civil partner)” in both places.
- (2) In Article 3, after the definition “income, profits or gains distributed” there is inserted –

“independently taxed civil partner” means a person who is in a civil partnership and to whom one or more of the following applies –

 - (a) the civil partnership was formed after 31st December 2021;
 - (b) the person or their civil partner became resident in Jersey after 31st December 2021;

- (c) the person and their civil partner have elected under Article 122DA to be independently taxed;”;
- “independently taxed spouse” means a person who is married and to whom one or more of the following applies –
- (a) the marriage took place after 31st December 2021;
 - (b) the person or their spouse became resident in Jersey after 31st December 2021;
 - (c) the person and their spouse have elected under Article 121C to be independently taxed;”.

3 Article 3 (general provisions as to interpretation) amended from 1st January 2023

- (1) In Article 3, definition “independently taxed civil partner”, after “elected under Article 122DA” there is inserted “or 122DB”.
- (2) In Article 3, definition “independently taxed spouse”, after “elected under Article 121C” there is inserted “or 121D”.

4 Article 18 (delivery of list by persons in receipt of taxable income belonging to others) amended

For Article 18(1)(c) there is substituted –

- “(c) the name and address of every person who owns each source and, for each person, whether the person is –
 - (i) of full age,
 - (ii) resident in Jersey,
 - (iii) incapacitated, and
 - (iv) married or in a civil partnership.”.

5 Article 41H (requirement to provide information when entering or resuming employment or sub-contracting) amended

- (1) In Article 41H(3), after “If the person is married or in a civil partnership” there is inserted “and the spouses or civil partners are not independently taxed”.
- (2) After Article 41H(3) there is inserted –
 - “(3A) If the person is married or in a civil partnership and the spouses or civil partners are independently taxed, the person must also notify the Comptroller of –
 - (a) the date of the marriage or formation of the civil partnership; and
 - (b) the information required by paragraph (2)(a) to (e) in respect of their spouse or civil partner.”.

6 Article 92A (threshold for exemption for income tax) amended

- (1) In Article 92A(2), for “where an individual proves” there is substituted “where an individual who is not an independently taxed spouse proves”.
- (2) In Article 92A(2A), for “where a civil partner A proves” there is substituted “where an individual who is not an independently taxed civil partner proves”.

7 Article 92B (increase in exemption threshold for child day care) amended

After Article 92B(2) there is inserted –

“(2A) An amount apportioned to an individual under paragraph (2) must not exceed the amount that the individual paid for child care for the qualifying child for the year of assessment.”.

8 Part 16 heading amended

For the heading to Part 16 there is substituted –

“SPECIAL PROVISIONS FOR CERTAIN MARRIED PEOPLE”.

9 New Article 120A (application of this Part) inserted

After the heading to Part 16 there is inserted –

“120A Application of this Part

This Part applies to married people, other than independently taxed spouses.”.

10 New Article 121C (election by spouses for independent taxation from 2022) inserted

After Article 121B there is inserted –

“121C Election by spouses for independent taxation from 2022

- (1) This Article applies to people who are spouses who, because of an election made under Article 121A, have been (or will be) separately assessed for the 2020 year of assessment.
- (2) People to whom this Article applies may elect to be independently taxed by, no later than 29th October 2021, giving notice in writing to the Comptroller signed by both spouses.
- (3) An election under paragraph (2) has the effect that both spouses are independently taxed spouses for the 2022 year of assessment and for all subsequent years of assessment.
- (4) An election cannot be revoked.”.

11 New Article 121D (election by spouses for independent taxation from 2023) inserted

After Article 121C there is inserted –

“121D Election by spouses for independent taxation from 2023

- (1) Spouses may elect to be independently taxed by, no later than 29th July 2022, giving notice in writing to the Comptroller signed by both spouses.
- (2) An election has the effect that both spouses are independently taxed spouses for the 2023 year of assessment and for all subsequent years of assessment.
- (3) An election cannot be revoked.”.

12 Part 16A heading amended

For the heading to Part 16A there is substituted –

“SPECIAL PROVISIONS FOR CERTAIN CIVIL PARTNERS”.

13 New Article 122AB (application of this Part) inserted

After the heading to Part 16A there is inserted –

“122AB Application of this Part

This Part applies to people in civil partnerships, other than independently taxed civil partners.”.

14 New Article 122DA (election by civil partners for independent taxation from 2022) inserted

After Article 122D there is inserted –

“122DA Election by civil partners for independent taxation from 2022

- (1) This Article applies to people who are civil partners who, because of an election made under Article 122C, have been (or will be) separately assessed for the 2020 year of assessment.
- (2) People to whom this Article applies may elect to be independently taxed by, no later than 29th October 2021, giving notice in writing to the Comptroller signed by both civil partners.
- (3) An election under paragraph (2) has the effect that both civil partners are independently taxed civil partners for the 2022 year of assessment and for all subsequent years of assessment.
- (4) An election cannot be revoked.”.

15 New Article 122DB (election by civil partners for independent taxation from 2023) inserted

After Article 122DA there is inserted –

“122DB Election by civil partners for independent taxation from 2023

- (1) Civil partners may elect to be independently taxed by, no later than 29th July 2022, giving notice in writing to the Comptroller signed by both civil partners.
- (2) An election has the effect that both civil partners are independently taxed civil partners for the 2023 year of assessment and for all subsequent years of assessment.
- (3) An election cannot be revoked.”.

16 Citation and commencement

- (1) This Law may be cited as the Income Tax (Amendment – Stage 1 of Independent Taxation) (Jersey) Law 202-.
- (2) This Law, except for Articles 3, 10 and 14, comes into force on 1st January 2022.
- (3) Article 3 comes into force on 1st January 2023.
- (4) Articles 10 and 14 come into force 7 days after this Law is registered.