Report to The Corporate Services Scrutiny Panel

Income Tax (Payment of 2019 Liability) (Jersey) Regulations 202- (P.9/2021)

The Tax, Public Finance and Tax Administration aspects of the Draft Regulations

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Table of Contents

1. The Draft Regulations

1.1 The Draft Income Tax (Payment of 2019 Liability) Regulations 202- (P.9/2021) set out the arrangements for payment of the 2019 tax liability by former Prior Year Basis (PYB) taxpayers which was frozen as a result of the adoption of P.118/2020 by the States Assembly on 4 November 2020.

1.2 This liability was stated by the primary legislation to be collected in the future, under Regulations to be brought forward at a later date. The Regulations on which this report is based represent the next stage in this process, and include the proposals for implementing that collection process.

Background

1.3 The consultation on the amendment to Income Tax law to bring all taxpayers on to a Current Year Basis (CYB) highlighted concerns[1] among affected taxpayers about the proposals for paying the frozen 2019 liability, and feedback[2] from focus groups supported these concerns and provided more depth to the expressions of concern.,

1.4 As a result, the initial proposals were substantially revised to provide a much longer time period during which the 2019 liability would be payable, and also to address concerns of taxpayers currently in retirement with limited (and fixed) annual income.

1.5 A detailed analysis of the likely impact on affected persons and the impact on Government finances and tax administration follows.

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[1] Dealt with in the report of CSSP S.R.7/2020 dated 30 October 2020

[2] PYB Tax Reforms Focus Groups Report dated December 2020 prepared by 4insight

2. Impact of the proposals on various taxpayer groups

2.1 The potential impact on various taxpayers has been considered, aided by an analysis of the estimated 2019 total liability provided by Revenue Jersey. Although this is based on interim figures which may be subject to change when finalised, the overall picture provided by the analysis is unlikely to alter materially.

2.2 The demographic analysis on which the following comments are based was provided to me by Revenue Jersey on 5 March 2021. It provides two tables as follows:

Table 1 : Analysis of 2019 liability by age of PYB taxpayer

Taxpayer Type	Age Range**	Count of Taxpayer	Sum of Suspended Liability	Individual Liability %
Individual*	30 years or younger	145	£1M	0.4
	31-40	3,038	£25M	7.4
	41-50	6,380	£79M	23.8
	51-60	8,159	£110M	33.1
	61-70	6,068	£67M	20.0
	71-80	3,591	£33M	9.9
	81-90	1,811	£15M	4.5
	Over 90	427	£3M	0.9
	N/A	67	£0M	0.1
	Individual Total	**29,686**	**£333M**	**100.0**
Non Individual		326	£14M	
Grand Total		**30,012**	**£348M**	

* Individual refers to both single taxpayers and a married couple/civil partners (who presently count as a single taxpayer)
** Age of taxpayer (or husband/spouse A in the case of a married couple or civil partnership) at 31 December 2021

2.3 I have further been provided with a split of liabilities due by married taxpayers to aid my analysis

Table 2 : Analysis of 2019 liability by current marital status

Taxpayer Type	Married	Count of Taxpayer	Sum of Suspended Liability	Individual Liability %
Individual	Married	13,912	£216M	64.9
	Unmarried	15,774	£117M	35.1
	Individual Total	**29,686**	**£333M**	100.0
Non Individual		326	£14M	
Grand Total		**30,012**	**£348M**	

Impact on pensioners

2.4 Those taxpayers with a 2019 liability who are currently aged over pensionable age number at least 5,829 (the sum of individuals aged 71 and over from **Table 1** above). As an estimate one might include 50% of the number of taxpayers aged 60 – 69 in the table, assuming that the age range is evenly distributed within each age band, which brings the total to 8,863 taxpayers (or couples), or 29.86% of the number of individual taxpayers with a 2019 liability.

2.5 It is fair to assume that many of these taxpayers are no longer working and are therefore on fixed incomes, with very little scope to bear additional tax liabilities. The total amount owed by this group of taxpayers (using the same assumptions as above) is estimated at £70 million or 21.1% of the total liability due by individuals and couples.

2.6 Where a person has decided to retire early, before normal pensionable age, I have assumed that they are financially well placed and therefore have not considered their needs further under this heading. It is worth noting that in the event that a person in this position elects to pay by deferring the liability until pensionable age there will be two issues to note:

- Electing for deferral will cause the full amount of the liability to be collected before 2041 in almost all cases, and
- If the person has accessed their private pension, it is unlikely that this would provide the source of funds to meet the deferred liability when it falls due.

2.7 The default position in the Draft Regulations (at Regulation 3) is that the 2019 liability is due and payable in seventeen equal instalments from 31 December 2025 to 31 December 2041. For many in this group of taxpayers this will not be the actual payment pattern as some of them may not survive until 2041. They would therefore make payment of one seventeenth of their 2019 liability for each of the calendar years during which they remain alive, with the balance being met out of the estate on death (of which more details below at paragraph 2.14). The average debt per person or couple is therefore £7,898, meaning that payments of £463.58 per annum would be due or almost £39 per month.

2.8 The alternative to elect to be taxed under the deferral method provided for by Regulation 5 is not open to these taxpayers as this election requires them to settle the liability in full 12 months after reaching pensionable age. The default position will therefore apply, unless Regulation 11 (see paragraph 2.9) applies to them.

Hardship

2.9 Regulation 11 makes provision for people aged 65 or over on 31 December 2020, which applies to the population I have identified above at paragraph 2.4. Where the person would face financial hardship if required to make payments towards the 2019 liability, they may apply under this Regulation for some or all of the 2019 liability to be payable on death. The Comptroller is empowered to seek evidence to support the application, and if satisfied that financial hardship would arise through payment of the 2019 liability in accordance with the Regulations may approve the application.

2.10 Regulation 11 specifies that in determining whether the person would suffer financial hardship the Comptroller may consider

- The person's reasonable living expenses;
- Any assets the person owns or has an interest in; and
- Any other factor that the Comptroller considers relevant.

2.11 In making this provision for hardship, the Regulations do reflect the circumstances of many older people with 2019 liabilities and should be sufficient to ally concerns that people have about the payment of the liability, while providing adequate protection for public revenue to secure payment of the maximum amount possible towards the 2019 liability.

2.12 Where an application is made in a case of hardship and there are, in the view of the Comptroller, insufficient assets likely to be available in the estate to meet all of the 2019 liability, Government forecasting processes will need to include the probability of this element of the 2019 liability being irrecoverable.

2.13 Although providing for hardship for those already over retirement age, the Regulations do not make similar provision for those within a short period of retirement who are facing what is for them a substantial debt. From **Table 1** there around 3,034 people and couples within 5 years of retirement age, and their average 2019 liability is £11,041. They would be liable to pay £649 per annum towards their 2019 liability, or £54 per month. It is likely that some of these persons will be unable to meet the payments as they fall due and will need to rely on negotiating with Revenue Jersey for a manageable payment plan.

Death of a person with a 2019 liability

2.14 The Regulations set out what happens to the 2019 liability in the event of the death of the taxpayer. Regulation 12 makes the balance of outstanding 2019 liability due and payable at the date of death when the death occurs after the Regulations come into force. In the event of death before that event, the liability is due and payable 12 months after the Regulations come into force.

2.15 There are currently no provisions in force to charge interest on tax due but unpaid, but should such provisions be commenced then interest would be charged on the 2019 liability from date of death until the estate makes payment. This will encourage speedy resolution of the estate in the event of the death a person with a remaining 2019 liability.

Conclusion : Pensioners

Taken together the provisions in the Draft Regulations seem to make reasonable provision for the needs of pensioners in respect of their 2019 liability, and balance this against protecting the public revenue. Those nearing retirement do not benefit from the provisions designed to cover hardship and Revenue Jersey will need the resources to address issues of hardship for some of these taxpayers.

Impact on families with children

2.16 Returning to the demographic analysis of persons with a 2019 liability in **Table 1** on page 4, it is reasonable to assume that families with children cover the age range from the youngest people up to those aged 50 – allowing for children who are attending university. This, from **Table 1**, is a total of 9,563 persons and couples, representing 32.2% of the population of people with a 2019 liability.

2.17 The total amount of the 2019 liability owed by this group of people is £104 million, which is 31.2% of the total estimated 2019 liability due by individuals and couples.

2.18 Taking an average from the data provided in **Table 1** the amount of the 2019 liability falling on taxpayers in this demographic group is as follows:

Table 3 : amounts due by people representing families with children

Age range	Total 2019 liability	Number of people or couples	Average 2019 liability	Annual / monthly amount due
Up to 40	£26 m	3,183	£8,168	£480 / £40
41 - 50	£79 m	6,380	£12,382	£728 / £61

2.19 The Regulations (at Regulations 3 and 5) offer these taxpayers a choice, to be exercised by 30 September 2024, of whether to pay the 2019 liability by seventeen equal instalments due from 31 December 2025 through to 31 December 2041, as illustrated above in **Table 3** or to elect for deferred payment, meaning that the liability will be due 12 months after they reach pensionable age – which for this cohort will be age 67, in the light of the increasing pensionable age currently being implemented. So the liability will become due and payable at age 68.

Regular payment by instalment

2.20 As indicated above, this is the default position in the absence of an election or application for deferred payment either before or after 30 September 2024. The average amounts due by persons in this group are shown in **Table 3** above.

Payment holidays

2.21 Where a person has commenced payment by instalments and suffers financial difficulty the Regulations (at Regulation 4) provide for an automatic right to a single 12 month payment holiday. This would absolve the person from one annual instalment payment and spread the remainder of the person's 2019 liability over the remaining period up to 2041. There is also provision for further applications for 12 month payment holidays (Regulation 4(2)(b)), which may be approved by the Comptroller. There Is no requirement for the applicant to demonstrate hardship in the case of a second or subsequent application for a payment holiday.

2.22 The Regulations do not specify what factors the Comptroller should take into account in deciding whether to approve a second or subsequent application for a payment holiday. In order to provide transparency, the exercise of the Comptroller's powers under this Regulation should be disclosed so that affected persons have a clear understanding of how decisions are arrived at. This is a fundamental aspect of communicating the new rules to affected individuals, who will need to understand what recourse is available to them under the Regulations if they suffer hardship.

Key Finding 1: *The Regulations provide for the exercise of the Comptroller's discretion in allowing a second or subsequent payment holiday. The matters which would be taken into account are not prescribed by the Regulations so affected taxpayers are not in a position to understand whether they are likely to benefit from these arrangements before applying, or to challenge a decision against them.*

Recommendation 1: *That the basis of a decision by the Comptroller whether or not to approve a second or subsequent payment holiday should be a matter of public record, and reference made to this in communications with affected persons.*

Deferred payment election / application

2.23 The choice to pay by deferred payment is an absolute right if the person elects by 30 September 2024; there is no requirement that this election is approved. However, the election must be accompanied by a declaration that to the best of the person's knowledge they will have sufficient means to pay their 2019 liability when it falls due.

2.24 It is fair to assume, based on the responses to the consultation on the change to the PYB in Autumn 2020[3] that families with children believe that they will find additional payments of tax towards the 2019 liability a financial challenge, and as a result many in this group may well elect for deferred payment.

2.25 Given the age range of this group, it is important for Government projections that the significant potential delay in collecting the 2019 liability is recognised. Using the assumptions relied on above regarding the distribution of age ranges within each group, around 7,650 of this group will reach pensionable age after 31 December 2041, thus deferring the collection of the 2019 liability significantly. A person aged 30 on 31 December 2021 (the date applied in **Table 1** above) will not reach pensionable age until 2058, and their 2019 liability would be due in 2059 if they elect for deferral. A maximum of £81.3 million (24.4% of the total liability) could be due after 2041 if all of these taxpayers were to elect for deferred payment.

2.26 Where a person has not elected for deferred payment by 30 September 2024 they may apply to move to deferred payment at a later date. An application to do so must be accompanied by the confirmatory declaration referred to in paragraph 2.23 above. However, in this case the Comptroller will consider whether to approve the application (and may request evidence to support the declaration) and may do so if satisfied that the person will have sufficient means to pay the 2019 liability as it falls due at the deferral date. Any amounts not yet due and payable in respect of the 2019 liability are then deferred to 12 months after the person reaches pensionable age.

2.27 When a person has elected or applied for and been granted permission to pay the 2019 liability 12 months after reaching pensionable age, nothing in the Regulations seeks to remind them of their position and the fact that a potentially large sum of tax will become due and payable at a much later date. The Regulations (at Regulation 7(3)) do permit the Comptroller to seek evidence at any time that a person will have sufficient means to meet the deferred payment when it falls due, but the onus is on the individual to review their financial commitment on an ongoing basis.

2.28 Given the very long period of deferral, there is a risk that people who have made an election to defer the liability (or applied for and been granted deferral) may lose sight of the need to build up funds to pay the liability at a later date. This

[3] Covered in the Report of CSSP S.R.7/2020 dated 30 October 2020

presents a risk to public finances, and to loss of good faith by people who have undergone hardship in order to make the payments by annual instalments.

Key finding 2: *There is no mechanism presently set out to remind people who have elected for deferred payment of the need to build up funds to make payment when it falls due. This represents a risk to the collection of the 2019 liabilities at a future date.*

Recommendation 2*: That consideration is given to a form of reminder on a periodic basis to people who have elected for deferred payment, to encourage them to review their financial position and ensure that they are building up funds to pay their 2019 liability when it falls due*

2.29 Where a person liable to pay their 2019 liability 12 months after they reach pensionable age suffers a change of circumstances which means that they will no longer be able to pay the liability when it falls due Regulation 7(2) requires them to notify the Comptroller of that fact as soon as is practicable. There is no sanction prescribed for failure to do so.

2.30 In the event of such a change in circumstances, and in other cases where the Comptroller considers that a person will not have the means to make payment when it falls due, the Comptroller may require the person to pay the 2019 liability in equal instalments annually on 31 December following until 31 December 2041. (Regulation 7(5)).

2.31 Regulation 7(5) does not, however, provide for the situation where a person has made some payments towards their 2019 liability and then applies (and is granted permission) to move the remainder of the liability to deferred payment. If they subsequently find that they will not be able to pay the deferred liability at the due date, they may (under Regulations 7(5)) be moved back to instalment payments as described in paragraph 2.30. Making the '2019 liability' payable in instalments would mean that the person would be required to overpay the liability as it fails to take into account the payments already made.

Key Finding 3: *Regulation 7(5) does not recognise that a person unable to pay the 2019 liability 12 months after reaching pensionable age may already have made some payments towards the liability.*

Recommendation 3: *That the Regulations be amended to recognise payments already made on account of the 2019 liability in determining the amounts due and payable under Regulation 7(5) – payment by instalments of the liability previously deferred.*

2.32 In the event that a person who will reach pensionable age significantly after 31 December 2041 suffers a change in circumstances after that date, Regulation 7(5) as it stands does not provide for interim collection of any of the 2019 outstanding liability. The natural consequence of the Regulations as drafted is that the liability cannot become due and payable until the deferral date, after which enforcement can commence after a three year wait (Regulation 15).

Key Finding 4: *The Regulations do not currently provide a mechanism for collection of the 2019 liability deferred beyond 31 December 2041 in respect of which there is doubt concerning the person's ability to pay the 2019 liability as it falls due.*

Recommendation 4: *That the Regulations be amended to provide that a review of the collection of 2019 liabilities be carried out after 10 years and a report be presented to the States. Following this, further amendments to the Regulations should be considered, particularly in connection with liabilities deferred beyond 2041.*

Conclusion – Impact on families with children

The provisions in the Regulations give scope for relief for families with heavy financial responsibilities in providing for their children's needs and higher education.

Revenue Jersey has powers (outwith these Regulations) to support taxpayers in difficulty through the agreement of payment arrangements appropriate to the taxpayer's needs, and these powers would apply in the case of liabilities which have become due but which a family is struggling to meet.

A review of the provisions as recommended above after a bedding in period of 10 years will allow the States to decide whether the provisions to collect the 2019 liability are sufficient and whether they provide adequately for financial hardship suffered by family units.

Impact on divorcing couples and civil partners

2.33 Given that the Regulations provide for repayment of the 2019 liability over an extended period of time, the impact on married couples and civil partners whose relationship breaks down should be considered in making Regulations for the repayment of the 2019 liability.

2.34 **Table 2** on page 5 provides an analysis of the total 2019 liability between single and married persons. This shows that among individual taxpayers (that is, natural persons) there are 13,912 married couple taxpayers with a 2019 liability (46.9% of the total number of individual taxpayers). In aggregate the 2019 liability owed by married taxpayers is £216 million, or 65% of the total owed by individuals. So married couples and civil partners owe a disproportionate amount of the total 2019 liability. The average liability for a married couple is therefore £15,526.

2.35 The Regulations make no provision to recognise the impact of divorce on payment of the 2019 liability. This means that the husband, or Spouse A would remain liable for the payment of the 2019 liability after the divorce. The financial settlement on divorce would therefore need to recognise the requirement to make payment of the 2019 liability, either by instalment payments or by deferring the liability until 12 months after reaching pensionable age.

2.36 On the introduction of Independent taxation it is proposed that historic liabilities will not be affected by the changes, so the 2019 liability will remain with the husband or spouse A until settled.[4]

2.37 In the context of a divorcing couple, the 2019 liability is likely to represent the most significant financial issue for them after the resolution of a house owned by the couple (if any), and the lack of any provision in the Regulations to assist in this area is regrettable.

2.38 Income Tax law does provide for the Comptroller to make a ruling regarding a historic tax liability where a divorcing couple are unable to agree how this should be recognised in the divorce settlement[4].

2.39 The Regulations do make provision for the allocation of the 2019 liability in the case of a partnership. In this case, the 2019 liability would be due by the partnership itself, but in recognition of change in the constitution of the partnership, and after representations by accountants and other professional advisers, Regulation 14 makes provision for the liability to be divided between the partners of the firm in 2019 and to be regarded as part of the individual partner's personal 2019 liability.

2.40 The likelihood that couples will separate and divorce during the repayment period is high, particularly in view of the high number of married taxpayers who have a 2019 liability, and the length of time that will pass before these liabilities are met in full. In particular, it is widely recognised that financial pressures in a marriage can lead to the breakdown in the relationship. Those financial pressures are inevitably more likely for many couples with a 2019 liability.

2.41 Given the significant amount of total 2019 liability due by married couples (in relation to the very modest amount owed by partnerships) I am concerned that the failure of the Regulations to identify this as a serious issue needing specific measures will mean that couples whose relationship is in difficulty will have the added worry and expense of resolving the 2019 liability as part of the divorce settlement. The existence of a 2019 liability, potentially still due in full many years in the future makes it much more likely that a couple will not be able to resolve this issue amicably.

2.42 There is a risk that in some cases there may be insufficient joint assets to ensure an equitable division of marital assets after taking into account the 2019 liability, which means that an ongoing payment between the couple may be

[4] Evidence provided by the Comptroller during the CSSP public hearing with the Minister for Treasury & Resources on 26 February 2021.

necessary to cover the 2019 liability. This outcome would prolong the financial links between the couple for an extended period of time, which is an unsatisfactory outcome.

2.43 I have sought advice from an experienced divorce advocate in Jersey on this issue, in order to understand the current process regarding tax liabilities on divorce and how the 2019 liability might impact on divorcing couples. I now understand that an outstanding tax liability is an area where the Courts in Jersey are not able to intervene on divorce, and if the couple cannot reach an amicable agreement about how an outstanding liability is to be recognised as part of the financial settlement the only recourse is to the Comptroller. In this case the Comptroller does not have the benefit of a complete view of the couple’s financial and personal affairs and would have to make a difficult judgement without the insight that information would provide.

2.44 I have been advised that there can already be quite some difficulty in resolving the tax issue where a single year liability is outstanding, particularly where one of the couple is self-employed. The view of the advocate I consulted is that a significant liability to be settled potentially a long time after the divorce is finalised will add considerably to the time, worry and disagreement during the divorce process, and the lack of a satisfactory solution to this is a real problem. It is self-evident that this will also increase the costs borne by a couple seeking to divorce or dissolve their civil partnership.

2.45 The Panel received the following comment from a respondent to the request for views on the Draft Regulations:

> *“If the relationship comes to an end and spouse B had the majority of income in 2019, this would put spouse A in a difficult position. It would be unfair if he/she had to continue paying the outstanding instalments in full. The advice given on the States’ website is that from the date of a divorce the two parties will be assessed separately but in respect of earlier assessments ‘you may still have tax to pay up to the date of separation.’*
>
> *It would be possible to apportion the liability between the parties but only if detailed records of the 2019 return were available.*
>
> *If it has not already been covered by legislation there should be provision to ensure spouses are treated fairly in the context outlined, including full record keeping for a period extending well beyond 20 years.”*

2.46 It is difficult for Regulations of this nature to recognise all of the issues that may be relevant to a couple on divorce or dissolution of a civil partnership, so I have not recommended that the Regulations are amended to deal with this issue. However, amending the law to allow the Courts to resolve the issue of a tax liability in relation to a divorcing couple would be the obvious solution, as the Courts would be in full possession of all of the relevant information about the couple’s income and assets, and thus to arrive at an equitable solution.

2.47 The suggestion to move the responsibility for dealing with income tax liabilities of a couple to the Courts removes a burden from Revenue Jersey which falls outside the natural responsibilities of the department. It also provides for a more considered decision to be made in the light of all of the pertinent information, which will benefit the individuals concerned and is likely to serve as the best outcome for all.

Key finding 5: *The Regulations leave the husband or Spouse A liable for the 2019 liability following a divorce or dissolution of a civil partnership. This poses a risk that when couples divorce the existence of a 2019 liability will exacerbate the practical and financial difficulties the couple are facing. This is likely to adversely affect the mental health of individuals and may also impact negatively on children of the relationship. There is not presently a satisfactory mechanism for dealing with a disputed tax liability between a couple on divorce.*

Recommendation 5: *That income tax law be amended to provide that in the event of divorce or dissolution of a civil partnership the Courts may rule on any outstanding tax liability of the couple, including the 2019 liability.*

Conclusion: Impact on divorcing couples

The Regulations do not make adequate provision for dealing with the 2019 liability in the event of divorce, and given the sizeable proportion of the total 2019 liability due by married couples this is problematic. The state has, through the adoption of the amendment to Income Tax law removing the Prior Year Basis, imposed this liability on individuals, and has not, in my view, made proper consideration of the implications of that liability on individuals where there is a breakdown in their relationship.

Failure to address this point may adversely affect the future relationship of a divorcing couple and any children of the marriage or civil partnership. It may lead to protracted divorce disputes and significant additional legal costs incurred to resolve this issue between the couple. Ultimately, for some couples, it may prove impossible to resolve equitably given the assets available.

Leaving the solution to this to the Comptroller is not likely to provide an equitable solution in most cases, as the Comptroller will not be in possession of all of the information needed to make an appropriate decision. Changing tax law to provide for the Courts to rule on this issue is probably the only realistic solution.

Impact on the self employed

2.48 Self-employed taxpayers are more likely to experience fluctuating income and therefore may find the regular payment option more difficult to manage, particularly where their business activity is modestly rewarded. Persons in this position are also unlikely to benefit from an occupational pension arrangement as these are more common for employed individuals; this means that electing for deferred payment is not likely to be an appropriate option for these taxpayers.

2.49 In the event of a poor trading period, the opportunity to request a payment holiday would help people in this position. Given that payments are due over a 17 year period, it is possible (or even likely) that more than one period of trade would suffer poor results. Repeated applications for a payment holiday may, in the event offer limited relief as the resulting increased liabilities in subsequent years may become unmanageable.

2.50 This will particularly be the case when a self employed person had a very successful year in 2019 but then suffers a trading reversal from which it is difficult to recover. Given the impact of COVID-19 this is a real possibility, and Government, advised by the Comptroller will need to take this into account in predicting cash flows arising from payment of the 2019 liability.

Conclusion – impact on the self employed

It is difficult at this stage to predict the impact of the proposals on the self employed, but some of them are likely to be among those worst affected by the payment of the 2019 liability. Revenue Jersey will need to apply such powers as they have sensitively and also provide data to Government to enable reasonable predictions about the amount of the 2019 liability likely to be collected.

People for whom their 2020 liability is more than the 2019 liability

2.51 The Regulations deal only with the payment of the 2019 liability which has arisen as a result of the move from the PYB to the CYB of taxation. However, some people previously taxed on a PYB may be in the position that the payments they have made towards their 2019 liability, which have now been moved and applied to their 2020 liability, are insufficient to cover that 2020 liability as a result of an increase in their income between 2019 and 2020.

2.52 This leaves those persons not only with a 2019 liability due under the Regulations as described above, but also an additional 2020 liability arising through the shortfall.

2.53 In the Report[5] on the Draft Regulations the Minister for Treasury and Resources addresses this point specifically. Where the additional 2020 liability has arisen through a pay rise or similar event, it is expected that the person will have adequate funds with which to meet the extra liability. However, where the increased income arises as a result of other circumstances such as returning from a career break or parental leave, Revenue Jersey will adopt a sympathetic approach where a taxpayer is able to demonstrate financial hardship. This may involve smoothing the additional 2020 liability out over a period of years.

[5] Report on the Draft Income Tax (Payment of 2019 Liability) (Jersey) Regulations 202- P.9/2021 Page 9

3. Impacts of the Regulations more generally

3.1 In this section I consider the wider implications of the proposals for repayment of the 2019 liability.

Housing market / mortgage availability

3.2 Mortgage lenders have not given a specific answer to questions about how the repayment terms for the 2019 liability will affect lending decisions in the future. Some lenders have confirmed that their **normal** rules will apply in future to lending decisions.

3.3 The characterisation of the 2019 liability as an amount due at some future date, rather than an amount of tax debt presently outstanding means that the full amount is unlikely to be taken into account as a debt by lenders when considering approval of a mortgage application. The 2019 liability is only classified as a debt when triggered by the Regulations, which in the case of those paying by instalments, is an amount of one-seventeenth of the total 2019 liability each year from 2025 to 2041. There are some circumstances under which the whole 2019 liability would become due and payable but these are unlikely to arise frequently.

3.4 However, where lenders follow internationally accepted rules on affordability developed after the 2008 sub-prime mortgage collapse, this involves taking into account not only the gross income of the borrower(s) but also the regular outgoings from the household in an “affordability test”. In the UK this results in many applicants being refused a mortgage for which the repayments are significantly lower than the rental payments they are currently making, as lenders are required to take very risk averse decisions based on the affordability test.

3.5 Assuming that broadly the same basis applies to lending decisions in Jersey it is likely that these decisions will be affected by the proposals for repayment of the 2019 liability where a potential borrower has not elected for deferred payment. It is possible that once the 2019 liabilities are known and the payment arrangements finalised, lenders will take these into account in their affordability tests even before repayments start. This will inevitably result in lower mortgage offers than can be made without this additional debt and may lead to families being unable to secure their first start on the housing ladder.

3.6 The following contribution was provided by a respondent (a mortgage broker) to the request for comments on the Draft Regulations:

> *“The more worrying aspect of the new Regulations is the long-term repayment plan extending up to a max of 20 years that will be made available if required.*
>
> *As a regularly occurring monthly outgoing, the cost of servicing this will have to be taken into account by mortgage lenders and will have a*

detrimental impact on the maximum that they will be able to offer to a borrower"

3.7 It is possible that the reduced availability of mortgage lending could result in a downward price adjustment in the housing market. However, given the 20-year period for making repayments of the 2019 liability this is likely to be marginal.

3.8 It is also likely that persons seeking a mortgage or anticipating seeking a mortgage may elect for deferred payment, in order to remove consideration of the annual repayments from the affordability test. This will have an impact on the financial projections regarding collection of the 2019 total liability.

3.9 Where a person with a 2019 liability has fallen behind with annual payments (but not sought a formal payment holiday) the crystallisation of several years' repayments on a cumulative basis is certain to affect their ability to secure borrowing, as this would be an actual debt rather than a deferred liability.

Independent taxation

3.10 The introduction of independent taxation of married couples and civil partners is planned to commence from 2022. The indications are that this will be a phased approach and is unlikely to affect taxpayers with a 2019 liability immediately.

3.11 The arrangements are intended to be that on the introduction of independent taxation, there will be no changes to historic tax liabilities – that is, those arising prior to the implementation of independent taxation. On a normal year to year basis this is likely to mean that there is a single year's liability which may be left to be dealt with on the introduction of independent taxation.

3.12 However, in relation to the 2019 liability, this represents a potentially substantial tax debt which relates to the couple prior to independent taxation, and this debt will persist for potentially many years to come. Where a person has been paying the 2019 liability by annual instalments, by the time the couple are subject to independent taxation the amount may be less significant to them. However, where the husband (or spouse A) has deferred the liability for payment 12 months after they reach pensionable age, the 2019 liability is likely to represent a significant future debt.

3.13 To the extent that independent taxation allows a couple to become more financially independent of each other and in particular allows the wife (or spouse B) to have more financial autonomy, the existence of a 2019 liability prevents the couple from truly becoming financial autonomous until the 2019 liability has been settled in full.

***Key finding 6**: The existence of the 2019 liability means that married couples and civil partners will not achieve full independence in relation to their tax affairs for many years to come.*

***Recommendation 6:** That consideration is given to the aims and objectives of independent taxation and whether these can be realised for couples with a remaining 2019 liability*

Other taxation increases

3.14 The payment of the 2019 liability needs to be considered against a backdrop of proposed increases in taxation. While extending the payment term to 2041 is a welcome development to protect people with 2019 liabilities from financial difficulty, the repayments made under the instalment payment arrangements still represent an increase in the tax payments made year on year by affected taxpayers. Their ***experience*** of the tax burden will be that it has increased, without any increases in headline rates.

3.15 It is inevitable that even with the extended payment terms and the opportunity to take a payment holiday, some taxpayers will find this impacts significantly on their lifestyle, and there will be consequences for the wider Jersey economy and the ability of the Government to raise taxes in the future. This of course needs to be balanced by the fact that this debt is an amount properly due by affected individuals, and in fairness to those who have been taxed on a current year basis, must be collected to provide funds for public services.

3.16 The fact that some Jersey taxpayers will perceive that tax has increased as a result of the requirement to pay the 2019 liability needs to be borne in mind when considering other tax raising proposals in the future. Likely developments include:

- A proposal to increase the rate of Long Term Care (LTC) payments, which will add additional tax burdens for all taxpayers.
- The proposal to remove mortgage interest relief from 2025 which will undoubtedly increase the tax burden on many homeowners.

4. Public Finance, tax administration and resource implications

Budgeting for Government expenditure

4.1 The nature of the proposals for the repayment of the 2019 liability means that planning for the revenue stream within Government will be virtually impossible until after 30 September 2024, when many people with a 2019 liability will make a decision whether to meet the liability by annual instalments over the period 2025 to 2041, or to defer the liability until 12 months after they reach pensionable age. To be unable to budget for such a significant cash inflow makes managing Government finances and expenditure planning very difficult indeed.

4.2 Once 30 September 2024 has passed, projections on the basis of available data will be possible, but will be subject to revision when people change method of payment as provided for by Regulations 6 and 7. Although there is a significant number of affected taxpayers, it is likely that the number of people making changes to their plans for payment of the liability will balance each other out during the period for repayment.

4.3 In particular, although the annual payment plan indicates that the 2019 liability will be collected by 31 December 2041, the number of younger taxpayers electing for deferred payment will potentially significantly delay the collection of the 2019 liability. **Table 1** shows that 7,649 taxpayers will reach pensionable age after 2041, and that the 2019 liability relating to this population is £81.3 million (24% of the total amount due by individuals). These figures assume that the age of taxpayers is evenly distributed through the age range and takes an average across the age range for the amount of the 2019 liability due by any age group.

4.4 Extending this analysis, the following data may be of help in analysing the liability and *latest* payment dates given by the Regulations:

Years in which pensionable age is reached	Number of people	Aggregate 2019 liability (Millions)
2041 - 2045	3,190	£39.5
2046 - 2050	2,187	£23.3
2051 – 2055	1,519	£12.5
2056 and later	753	£6.0

4.5 Given the difficulty in budgeting for collection of the 2019 liability it is important that those responsible for managing Government finances prepare and update projections based on anticipated collection dates on a regular basis. Reports of actual collection against projected amounts on both a regular and timely basis will then allow proper oversight of the collection activity and the revision of budgets to reflect actual cash inflows and future expected revenue receipts.

4.6 Paragraphs 2.12 and 2.42 of this report identify situations in which budgeting processes will need to make provision for specific issues in relation to the collection of the 2019 total liability.

***Key Finding 7:** Budgeting for the revenue stream arising from the collection of the 2019 liability will be a challenging task, and the amounts involved are significant. This potentially adds risk to the management of Government expenditure over an extended period.*

***Recommendation 7:** That a formal system of reporting and review in relation to the recognition of the 2019 liability and the collection of the revenue in a timely and efficient manner be established and adequately reflected in the Annual Report and Accounts.*

Protecting Public Revenue

4.7 The Draft Regulations have been structured to provide manageable payment alternatives for people who have a 2019 liability. However, there is a risk that the generosity of the arrangements will be abused. Where a person has elected to defer the 2019 liability until 12 months after they reach pensionable age, there is a risk that they will deliberately deplete their available assets before that date and then fail to pay the liability as it falls due. For example, in the case of many of the people affected by this liability their pensionable age will be 67. Current tax law in relation to private pension arrangements allows an individual to draw a tax free lump sum from the pension arrangement at age 55, which the individual could spend during the following 10 to 12 years, leaving no assets with which to pay the 2019 liability as it falls due.

4.8 During the public hearing[6] as part of the Panel's review of the Regulations the Comptroller indicated that this area would be dealt with by a review on a risk basis of people's ability to pay the 2019 liability as it falls due. The Comptroller has a general power to request evidence that the person will have sufficient means to pay the 2019 liability as it falls due (Regulation 7(3)). It is right that the decision as to how often and when the Comptroller seeks such evidence rests with Revenue Jersey, but given the substantial sums involved it might be appropriate that some ministerial oversight is exercised over the compliance activity undertaken in relation to deferred 2019 liabilities.

4.9 In particular, although the Comptroller indicated[6] that Revenue Jersey would be advised when individuals access their pension savings, and can implement compliance activity at that point, in the absence of information from every person about how they plan to meet their future liability it is difficult to understand how this compliance activity can be properly structured and triggered appropriately. It is not clear whether Revenue Jersey seeks to check every case where pension savings mature or how this information could be matched easily against those individuals with a 2019 deferred liability. In any event this could be a very resource-intensive issue.

[6] Public Hearing of CSSP with the Minister for Treasury and Resources on 26 February 2021

4.10 Although Regulation 7(2) requires a person who has a deferred 2019 liability to inform the Comptroller if their circumstances change such that they will no longer have sufficient means to pay the liability on the due date, there is no sanction prescribed for failure to do so. In the circumstances described above at paragraph 4.6 it is possible that the fact that the liability cannot be met will not become apparent until the due date is reached. There are then limited options available to collect the debt in a timely manner, and indeed this may compromise collection of all or part of the debt. Key Finding 4 and Recommendation 4 also relate to this issue.

4.11 Taxpayers who choose to pay the 2019 liability by regular instalments can rightly expect the tax authority to ensure that those who have deferred the liability to pay it when it falls due. If they do not believe that adequate measures are in place to ensure full payment of the liability they may lose trust in the system, and may believe that they have been unfairly treated. It is therefore essential that there is a robust process of compliance activity in regard to deferred liabilities, not only for the protection of public revenue but also to retain the trust of former PYB taxpayers making payment of their liability.

4.12 One respondent to the public request for comment on the Draft Regulations expressed concern about the generous nature of the provisions and the potential for some taxpayers to abuse this:

> *"The Government's proposal to mitigate the difficulties that may be faced by certain taxpayers in settling their 2019 tax liability arising from the above is to allow tax payers to pay over 20 years or after retirement. I fully support giving more time to certain taxpayers who may be stretched financially for various genuine financial reasons however there needs to needs to be an equitable system put in place to ensure all taxpayers are treated fairly otherwise the island is providing an interest free loan to those taxpayers who may deliberately delay payment unnecessarily . I believe the option of giving tax payers such a long period of 20 years to settle this liability which has arisen from income that they have already received is excessive, in particular because there is no additional charge imposed on late settlement of the liability or any incentive for taxpayers to settle this within a normal or more reasonable timeframe.*
>
> *I am fully supportive of allowing more time generally to allow a person to settle the 2019 tax liability and in particular to certain taxpayers who may be stretched for genuine financial reasons (which needs to be explained). I believe the current proposals to allow 20 years or more are excessive , inequitable to those taxpayers who settle the liability on a "normal basis" and will be very costly to administer and inevitably result in a loss of some of this tax liability."*

***Key finding 8:** Deferral of 2019 liabilities under the Regulations present a risk to public revenue, but also a potential for unfair application of the law between taxpayers.*

***Recommendation 8:** That the principle that Revenue Jersey will check that deferred 2019 liabilities will be paid when they fall due is publicly communicated. It is unlikely to be appropriate that the exact means by which this is done should be a matter of public record, but all taxpayers will benefit from a clear understanding that deferring their 2019 liability is a serious commitment to make payment at the appropriate time.*

4.13 Where 2019 liabilities have been deferred this may result in a very long period of time passing before the liability falls due. Some people with deferred liabilities may overlook the need to start building up a financial asset to make payment at a future date, and may forget that the liability is due at some point in the future. It would support the collection process for a periodic reminder to be issued to people with a deferred liability of the amount of the liability and due date for payment. Key Finding 2 and Recommendation 2 deal with this issue.

4.14 Where a younger person has chosen to defer the 2019 liability, and subsequently discovers that their assets will not be sufficient to meet the liability when it falls due, the Regulations provide that the Comptroller may require the person to pay the 2019 liability by annul instalments over the period up to 2041. However, for taxpayers currently under 47 years of age, this may arise after 31 December 2041. The Regulations make no provision to deal with this situation, and the liability cannot therefore be collected until the person defaults on payment when it falls due. Key finding 4 and Recommendation 4 highlight this issue, and recommend that the Regulations are reviewed after a period of 10 years to identify any amendments that may be required based on actual experience of collection of the 2019 liability.

Managing administration and collection of the liability

4.15 The Report on the Focus Groups[7] included a clear indication that many respondents wanted a simple payment system which could be self-managed and should primarily be digitally based.

4.16 The opportunity to build a digital system for managing the 2019 liability would relieve Revenue Jersey of some of the administrative time and effort in managing the liability. It would also provide many people with an easy way of reviewing their outstanding liability and give them a better understanding of how much is due and when.

4.17 Allowing (and even encouraging) taxpayers to engage digitally with their 2019 liability would also promote digital engagement with tax generally, and is likely to

[7] PYB Tax Reform Focus Groups Report dated December 2020 prepared by 4insight. Page 2

support the development of online filing and other digital engagement that Revenue Jersey might seek to implement.

4.18 Developing the functionality to achieve this will require careful planning and customer research, and potentially significant expense, but this would be a key investment in reducing administrative effort to manage the liability.

4.19 One of the responses provided to the request for comment on the Draft Regulations did express concern about the administrative issues in managing the liability for Revenue Jersey:

> *"One other aspect of these proposals is that the administrative costs of following up/ tracking this long term settlement (i.e. with people moving/ leaving the island etc) will be absolutely huge and will inevitably result in a substantial amount of the tax due being lost"*

4.20 Another respondent to the request for comment replied as follows:

> *"To ensure there are no misunderstandings or surprises the Comptroller should issue, at least annually, a statement showing the total paid, the total outstanding and the amount of equal annual payments needed to clear the liability by 31 December 2041. Appropriate computer facilities will be required."*

4.21 It seems clear that there is an appetite among those with a 2019 liability for clear and up to date information about their outstanding liability, which is probably most appropriately provided through an online account. This account could provide the facility to make payment, or to request contact from Revenue Jersey regarding payment holidays and other aspects of the Regulations. This would reduce the volume of telephone contact and provide a more manageable way of dealing with the administration of the collection of the 2019 liability.

Key finding 9: *Taxpayers with a 2019 liability would like the opportunity to see the outstanding liability and manage the basic administration of their liability themselves, ideally through digital provision.*

Recommendation 9: *That the proposals for administering collection of the 2019 liability include developing a facility for people to manage much of the administration themselves. This might be through the development of a smartphone 'App' which would provide a platform for further future digital engagement with taxpayers on other tax matters, supporting the modernisation of the administration of income tax in Jersey.*

4.22 Plans to manage the administration of the collection of the 2019 liability and in particular the option of the use of digital tools by taxpayers to self-manage the liability will be a challenge for some taxpayers who are not digitally confident. The development of processes will therefore need to bear in mind that non digital methods of engagement will need to be developed (and adequately funded) alongside digital delivery.

Key finding 10: *Because of the wide age range of affected taxpayers, it is likely that there will be a significant number who are not able or confident to engage through digital means.*

Recommendation 10: *That adequate resources are allocated so that processes can be developed to cater for the needs of taxpayers unable to engage digitally. These processes should include the periodic notification of the outstanding liability to taxpayers making regular payments towards their 2019 liability.*

4.23 Even with the provision of a self-managed facility, the resource implications for Revenue Jersey of managing collection of the 2019 liability are likely to be significant. The Report accompanying the Draft Regulations sets out very broad estimates of the likely costs of implementing the changes as follows:

- Computer system changes – between £200,00 and £400,000 one off cost
- Communications costs - £100,000
- Annual staff costs (over 20 years) - £50,000 to £60,000 with an element of front loading. This provides for (on average) one additional member of staff to manage the administration of the 2019 liability.

4.24 In summary, the planned expenditure on implementation is of the order of £400,000 to £600,000 in set up costs and ongoing costs of £50,000 to £60,000. The Report notes that this expenditure is currently not provided for and will need to be included in Government plans after 2021.

4.25 I have been unable to review or comment on preparations for development of systems (including computer systems) to administer the collection of the 2019 liability as plans are not sufficiently advanced to allow such a review. There is a long lead time before routine collection commences, but in the interim some taxpayers may wish to make payments towards their liability. The administration of this in the interim before new systems are developed is an area of risk, as it is unlikely that appropriate systems and controls have been developed to manage this given that the focus needs to be on building a long term solution for collection.

Key finding 11: *Ad hoc collection of the 2019 liability in advance of new computer systems being developed and implemented is a risky area as any practical arrangements introduced are necessarily short term.*

Recommendation 11: *That suitable management and oversight processes be implemented urgently to establish a temporary system of internal control and reporting mechanism to ensure that in the short term this is adequately controlled.*

4.26 The estimate of one additional member of staff in the medium term (steady state) to operate the collection of the 2019 liability may not be sufficient. There are a number of strands needed to ensure the smooth collection of the liability and related compliance activity. These might include:

- Dealing with requests to move from annual payment to deferred liability and consideration and approval of such requests
- Agreeing future payment plans with taxpayers who have discovered that they will not have sufficient assets to pay a deferred 2019 liability.
- Dealing with taxpayers who cannot meet the annual payments as they fall due and negotiating appropriate payment arrangements
- Processing the application and outcome of first payment holidays for taxpayers
- Considering applications for second and subsequent payment holidays and either approving or refusing these; additional time spent re-scheduling payment arrangements to reflect second or subsequent payment holidays agreed.
- Dealing with enforcement of the full debt for those taxpayers who have not made payment for a three year period after some or all of the 2019 liability falls due
- Compliance work on deferred liabilities to ensure that sufficient assets are available to pay the liability when it falls due
- Providing data and reports to Government on the collection of 2019 liabilities and the amount for which deferral has been granted and the due dates (to enable forecasting)
- Negotiating with taxpayers leaving Jersey in regard to payment of their 2019 liability
- Supporting taxpayers unable to engage digitally with understanding their remaining 2019 liability and when payments are due
- Processing / recording payment made against the 2019 liability where this cannot be automated
- Dealing with collection from the estate of a deceased taxpayer
- Compliance and collection activity in relation to non-resident taxpayers
- Dealing with appeals against the various decisions provided for in the Regulations
- Providing paper statements of the outstanding 2019 liability to those taxpayers who choose not to receive that information digitally

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***Key Finding 12**: It is practically difficult to predict how much time will be spent dealing with administration of collection and compliance in relation to the 2019 liability before collection commences. The current estimate of one member of staff may be inadequate*

***Recommendation 12**: That the steady state requirements of operating collection and compliance work with respect to the 2019 liability be kept under review and additional resources be made available if necessary*

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5. Conclusion

5.1 The proposals in the Draft Regulations for the collection of the deferred 2019 liability have been significantly revised since the original proposals were developed in October 2020.

5.2 The changes from the original proposals make payment of the 2019 liability more manageable for all taxpayers with a 2019 liability. However, the consequence of this is that collection of the liability has been extended over a very long period which will have a significant impact on Government projections of revenue inflows and management of Government expenditure. Appropriate risk management processes will be essential.

5.3 In particular, the provision for the liability to be collected on death in cases of hardship where taxpayers who have attained pension age before the Regulations commence is a sensible recognition of the precarious financial position that some taxpayers may experience.

5.4 Taken as a whole, the proposals address many of the concerns expressed by taxpayers in the focus groups which examined the change to the PYB tax system. Although it was originally considered that an affordability test be implemented, the Regulations provide sufficient scope for flexibility over collection to obviate the need for such a test – which may have been considered intrusive and would certainly be resource intensive.

5.5 One of the key failings in the Regulations – and probably the most important one – is the lack of recognition that the 2019 liability imposes significant extra pressure and worry on couples whose relationship has broken down sufficiently that they are seeking divorce or dissolution of their civil partnership. Although in practice this will prove a difficult issue to resolve, the failure to even consider the issue is regrettable.

5.6 It is likely that those taxpayers with a 2019 liability in payment over the 20 year period allowed will see reduced availability of mortgage funding as a result of the recognition of their additional regular outgoings by potential lenders.

5.7 With such generous provision for payment of the 2019 liability over a considerable period of time, this inevitably increases the risk that some of the amount due will not prove to be recoverable. This demands careful design and application of compliance processes and sufficient oversight to minimise this risk.

5.8 The appetite of taxpayers to self-manage their liability and payments through the use of digital technology is encouraging and should provide the impetus for Revenue Jersey to make the most of this opportunity to limit the internal administration costs through the development of an appropriate digital platform.

5.9 I have not been able to review the project plan for implementation of the processes to manage collection of the 2019 as this has not yet been developed.

5.10 The resource needs of Revenue Jersey to manage collection and compliance work in relation to the 2019 liability will need to be reviewed as plans develop to ensure that adequate resources are available.

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