



## **Corporate Services Scrutiny Panel**

### Taxation Amendment Law Review

## **Witness: The Minister for Treasury and Resources**

Friday, 25th June 2021

**Panel:**

Deputy S.M. Ahier of St. Helier (Chair)

Connétable R. Vibert of St. Peter

Senator T.A. Vallois

Senator S.W. Pallett

**Panel Adviser**

Ms. R. Benneyworth

**Witnesses:**

Deputy S.J. Pinel of St. Clement, The Minister for Treasury and Resources

Mr. R. Summersgill, Comptroller of Revenue

Ms. F. Fraser, Deputy Director, Domestic Tax Policy, Revenue Jersey

[13:01]

**Deputy S.M. Ahier of St. Helier (Chair):**

Thank you all for coming today. We are here today to discuss the Draft Taxation (Income Tax, Goods and Services Tax and Revenue Administration) (Amendment) (Jersey) Law 202-, P.51. The normal hearing standards will apply. It will be recorded and transcribed and before we start I would like to introduce ourselves. My name is Deputy Steve Ahier. I will be chair today.

**Senator T.A. Vallois:**

Senator Tracy Vallois, member of the panel.

**Connétable R. Vibert of St. Peter:**

Constable Richard Vibert, member of the panel.

**Senator S.W. Pallett:**

Senator Steve Pallett, another member of the panel.

**The Minister for Treasury and Resources:**

Deputy Susie Pinel, Minister for Treasury and Resources.

**Comptroller of Revenue:**

Richard Summersgill, Comptroller of Revenue.

**Deputy Director, Revenue Jersey:**

Fiona Fraser, Domestic Tax Policy, Revenue Jersey.

**Panel Adviser:**

Rebecca Benneyworth, adviser to the panel.

**Deputy S.M. Ahier:**

Thank you all. To start, Minister, will you explain your reasons for bringing this proposition, an overview?

**The Minister for Treasury and Resources:**

Yes, it is and I have got a few opening remarks, just to set the scene, and then I will hand over to the 2 competent ones either side of me. This is quite a long title of course, Draft Taxation (Income Tax, Goods and Services Tax and Revenue Administration) (Amendment), just for clarity. I am delighted to be bringing these measures back to the Assembly because they have had rather a chequered history. Much of this is what you saw in a previous hearing, several measures that were first lodged in the draft finance law for 2020, which was back in October 2019. Scrutiny at that time asked me not to propose these administrative measures because of the weight of work facing them in scrutinising the first Government Plan. We agreed not to propose them and subsequently agreed to a further deferral, and then COVID intervened. The key substantive measures clarify and largely limit the power of the Comptroller of Revenue to amend a tax assessment from 5 years to 2 years in most cases. It empowers the Commissioners of Appeal for Taxes to publish their determinations. These have hitherto remained private. It gives Revenue Jersey a new civil power as an alternative to existing criminal provisions to oblige taxpayers and related third parties to provide information to the Comptroller. This can be used in the minority of cases where taxpayers refuse to answer inquiries from Revenue Jersey voluntarily, or where a third party needs the legal cover to provide

relevant information. Various minor amendments to the interpretation and scope of the Revenue Administration (Jersey) Law remain unchanged from the draft of the 2020 finance law. Having accepted the recommendation of the C.S.S.P. (Corporate Services Scrutiny Panel) report in respect of the prior year basis regulations a new measure ensures that the Assembly can, in future, amend those regulations. We are also making changes to ensure that the criminal provisions, in particular the 1961 Income Tax (Jersey) Law, are effective. Finally, to close a loophole in the Goods and Services Tax (Jersey) Law, this law obliges Revenue Jersey to register a trader for G.S.T. (goods and services tax) if they choose not to register voluntarily but have annual turnover exceeding £300,000. There is much yet to do to modernise Jersey's tax laws and its tax administration. This is the next modest step, hot on the heels of the conversion of all Jersey taxpayers to the current year basis of paying taxes. In August, as you will be aware, I will be lodging the next big reform legislating for the introduction of independent taxation and the gradual demise of the archaic so-called married man's taxation. Those are my opening comments, which I hope are a simpler way of putting it than the proposition.

**Deputy S.M. Ahier:**

Thank you very much, Minister. If we start on criminal sanctions of failing to make a return. The new provision setting out criminal sanctions for failure to make a return allow an officer of a body corporate to also be subject to sanction under certain circumstances. Is it the intention that both the body corporate and one or more officers are all subject to criminal prosecution?

**Comptroller of Revenue:**

The law effectively gives the Attorney General the choice. Depending on what is discovered in the course of an inquiry or an investigation when we bring matters to the Attorney General, it would allow him to determine on the facts who to prosecute, assuming prosecution is appropriate.

**Deputy S.M. Ahier:**

So there could be multiple prosecutions?

**Comptroller of Revenue:**

I think it provides choice. It would very much depend on the facts of the case and who indeed, by the facts of the case, was culpable. What that provision is doing is making sure that it is of a wide enough scope to cover the possible range of misdemeanours.

**Deputy S.M. Ahier:**

So would there be the possibility of someone receiving 2 penalties in effect for the same offence?

**Comptroller of Revenue:**

No. In fact there is a provision in this law that specifically rules that out, which we can probably find.

**Deputy S.M. Ahier:**

Is that Article 21C?

**Comptroller of Revenue:**

I will ask Fiona to find that, but there is something specific that says if somebody has borne a criminal offence they will not receive a civil penalty and vice-versa.

**Deputy S.M. Ahier:**

Might the definition of "relevant officer" be improved by adding the term "shadow director"?

**Comptroller of Revenue:**

I honestly do not know. I would have to talk to lawyers about that. Shadow director is not a term I recognise.

**Deputy S.M. Ahier:**

There does seem to be an extensive list of a general partner, a limited partner, a director, manager, secretary or other similar officer, body corporate. It is quite extensive. Do you not think it could be more closely defined?

**Comptroller of Revenue:**

No. In terms of criminal sanctions what the law is seeking to do is to ensure that the range of people who could have committed an offence are encompassed within the law. At the end of the day, subject to inquiries and investigation, that would establish whether an offence had been committed and by whom. At the moment the law does not necessarily give the Attorney General the ability to bring a prosecution against the right person. This simply enables in future that where it is appropriate to do so the Attorney General will be able to prosecute the right person.

**Deputy S.M. Ahier:**

Is this a new criminal offence?

**Comptroller of Revenue:**

It is not really a new criminal offence. I think as the explanatory notes say, and as the Minister's letter to Senator Moore said at the outset, we have identified through a great deal of internal review over the last year or 2 a number of areas where the criminal law of Jersey in respect of taxation is defective or inoperable. What these measures do is make it effective and operable. They do not, as far as I can see, change people's views of what the tax authority and the law officers could always

do, but for various reasons over the past 20 years some of the things in the 1961 law have become unworkable. I think that is partly because the law was never really updated or reviewed to take account of the effect of human rights changes. For example, if we wound the clock back 15 years, the Bailiff of the day, the law officers of the day, were criticising my predecessors for not bringing enough criminal prosecutions. When I became the Comptroller about 6 years ago I was asked to look at that and we did start to increase our compliance activities. We have found several cases we could take to the Attorney General to consider prosecution, but in going through that process both Revenue Jersey and the law officers have together identified that some of the provisions just do not work anymore. The part of this law that amends the criminal tax law is about making things effective that at some point in the past ceased to be effective, but I do not think there is anything that I would characterise as particularly new or novel in here. In respect of the example, you started with one of the things identified is that the range of persons that might commit an offence was not within the scope of the law.

**Deputy S.M. Ahier:**

Are we slowly moving towards U.K. (United Kingdom) tax law?

**Comptroller of Revenue:**

The 1928 tax laws were copied from U.K. tax law, so they have always been U.K. tax law. The problem, if anything, is that we have not kept pace with change. The 1928 law was really based on the Inland Revenue laws that were in force in the 1920s. Some of them have not substantively changed ever since, even in 1961. If you are suggesting that we are in danger of copying the U.K. too much or copying their statute I think we should certainly avoid that, because the Jersey tax law is still a couple of inches thick. The U.K. tax law is several feet thick, and I do not think any of us want to go there. Equally, we have to make sure that the tax laws we do have are effective and what we have discovered over the past 5 or 6 years since we have tried to re-energise some of our compliance work at the request of Government and the law officers is that it is defective and needs to be updated. We have had this discussion I think at earlier hearings, where I think the Minister has said that a great deal of the tax law needs modernisation and reformation. Frankly, I suspect that in the next decade we will continue to keep bringing amendment laws to the Assembly to think about improving various areas. You may remember, for example, that Mr. John Shenton, when he was giving evidence on this matter about 2 years ago, said that the tax law was not really fit for a modern international finance sector, and I agree with him. We must keep gradually improving things. An example of that is about 18 months ago we amended the tax law to recognise Sharia financing arrangements, which just was not in the 1961 tax law and even in the period from 1961 until recent times we had no provision for.

[13:15]

**Senator T.A. Vallois:**

It is not clear from the legislation where the dividing line is between late and not provided. On that basis could you explain how the transition from civil penalties to criminal sanction is envisaged to work?

**Comptroller of Revenue:**

I am not sure there is a direct correlation between something being late or not provided and civil and criminal penalties. Late filing penalties, for example, would arise the moment somebody had not filed by the statutory deadline. If they still had not provided that year's tax assessment after 3 or 4 years then I think it would be fairly clear it had not been provided, and this does happen quite frequently. Up until very recently even the late filing penalties in Jersey were subject to criminal sanctions and only subject to criminal sanctions. What we have done over the past 2 or 3 years, what the Minister has achieved both through the finance laws, the Revenue Administration (Jersey) Law and now this law, is gradually to introduce a number of civil approaches and civil penalties. The late filing penalty is now civil and that is in the Revenue Administration (Jersey) Law, I think, and that would no longer be treated criminally. As I say, there may be the odd egregious case and we do get them where people have not filed for several years but they need to file and there is the possibility to take that into the Royal Court if it is deemed appropriate to do so. Again, it is probably worth stressing, while we make the inquiries and conduct the investigations, the decision whether to prosecute is always the Attorney General's. We would simply pass a case to the Attorney General to consider. If the Attorney General said: "No, I do not want to deal with this criminally" then it would just be dealt with as a civil matter.

**Senator T.A. Vallois:**

Is there a line of level of proof for you to provide that case to the A.G. (Attorney General) so the A.G.'s office does not get overwhelmed, if that were to be the case? I do not know the extent of this.

**Comptroller of Revenue:**

What we tend to always do is have early discussions with our own lawyers who advise us in the Law Officers' Department on a day-to-day basis about whether or not something may or may not be worth pursuing. Clearly if something is subject to a criminal sanction, certainly if you are getting to the point of talking about potential imprisonment, then the burdens of proof are clearly higher. It is usually beyond all reasonable doubt, whereas for civil penalties it is on the balance of probabilities. That is why we have all been very keen to create civil approaches and that is, for example, why the civil information power is here, because up until now we have only been able to rely on section 16A of the law, which is attached to a criminal tariff. It is a financial tariff rather than a prison term, but nonetheless it is a criminal matter and therefore it is potentially going into the Royal Court. Moving

to civil approaches is by far the best thing to do for us and for taxpayers. It is certainly our policy in Revenue Jersey, as it is I think in most tax administrations generally to deal with matters civilly, which is why I was very keen that we started to make this move. The vast majority of taxpayers prefer to be dealt with civilly. If they are going to be fined they would rather be fined, pay it and keep out of the glare of the Royal Court.

**The Minister for Treasury and Resources:**

The Comptroller alluded to earlier that because of the investigation into non-compliance there are a small number, but even so a number, who are deliberately avoiding tax matters and have been doing so for years. Although the A.G. would be willing to prosecute he cannot because of the way the law is configured at the moment. I think I am right in saying these changes make it easier.

**Comptroller of Revenue:**

Yes. Generally speaking what this does in some areas is it continues the journey towards having civil options rather than using criminal powers, but the important thing this does is it does make the criminal powers effective where you do need to use them. That is what seems to have lapsed over the last 10 to 15 years.

**Senator T.A. Vallois:**

The only reason to push in terms of understanding the civil and the criminal is of course the cost of justice in Jersey is not cheap so recognising proportionality and understanding what that looks like is helpful. In terms of the evidence of the people that have not been doing what is required, it is I think quite important to understand the scale of this issue.

**Comptroller of Revenue:**

Yes, and it is generally true here and elsewhere that criminal powers are reserved for the most egregious cases and the most egregious cases are a minority. The vast majority of taxpayers try to do their best to comply and do. There are then a body of taxpayers who can be a bit careless and negligent. There are then some who deliberately seek to avoid or evade and typically that is a very small percentage of any taxpayer population, but obviously you do need your criminal powers to be effective where you need to tackle those cases.

**Deputy Director, Revenue Jersey:**

If I could just clarify some of the points that you were discussing earlier? The first one, you were talking about the penalties in 21B and 21C, could somebody be subject to penalties. The same person would not be, but I think it does make clear that if you have an entity like a partnership where there is not an obvious person to point to, that partnership would have partners or a corporate would have officers. In those circumstances, if the facts show that an individual, a real person, who is an

officer or somebody purporting to be an officer of the company, that their conduct has led to the company committing the offence they will be liable to an offence. That is the combination of 21B and 21C. I am not sure whether it was Rebecca but somebody talked about potentially shadow director, or it may have been you. That is covered in the new 21C. We talk about the things that most people would recognise in an above-board structure, directors and managers, and then there is the provision saying a person purporting to act in any capacity mentioned in those provisions, so that would cover shadow directors. The only other point you asked, the Comptroller said there is definitely something in here and he is quite right about where somebody has already been convicted of an offence, this is specifically for G.S.T. law and, as I understand it, that is to bring that into line with other tax laws. For your reference it is Article 23 of this law, which amends Article 71 of the G.S.T. law and it just makes absolutely clear that a person is not liable to penalty tax in respect of conduct for which the person has been convicted of an offence. That is G.S.T. law.

**Deputy S.M. Ahier:**

Just before I pass over, Article 11 allows the amendment of an assessment made in the absence of a return without time limit. That will only apply to previous tax forms, will it not, prior to the amendment coming in next year?

**Deputy Director, Revenue Jersey:**

It does not take effect until your assessment for 2022.

**Comptroller of Revenue:**

It cannot be applied retroactively.

**Senator S.W. Pallett:**

Just to be clear about that, if an officer were found culpable of an offence the body corporate or the partnership, presumably, if they had not shown proper oversight could also be prosecuted, so you could get 2 prosecutions with the one offence?

**Deputy Director, Revenue Jersey:**

I am not sure if that would be a tax prosecution. There might be something within the registry here where somebody had not fulfilled their statutory obligations as an officer, but we would have to go away and look at that. That would not be a separate tax offence, I do not think in those circumstances.

**Senator S.W. Pallett:**

In terms of a specific tax offence only one or other would be prosecuted?



**Deputy Director, Revenue Jersey:**

I think we would have to check. I cannot see why, even if it were possible strictly to have, let us say, a company plus a director of the company, because the director of the company is the one that led to failure to deliver a return, say, and you could evidence that, we would be taking advice from the Attorney.

**Comptroller of Revenue:**

Yes. We can check on that. You are obviously at liberty to ask the Attorney General direct and at the end of the day it will be the Attorney General's call.

**Deputy Director, Revenue Jersey:**

But they are separate legal persons, the company and the officers of the company, or the partnership and the partners.

**Senator S.W. Pallett:**

Both presumably could have acted recklessly and could be in a position where they were getting prosecuted.

**Deputy Director, Revenue Jersey:**

The partnership I suppose would be prosecuted through its partners, would it not, or the corporate would be prosecuted through, say, a managing director if there was, because they cannot turn up in court themselves. There would be a real person behind it, but these laws, the offence by a real person, is to ensure that somebody cannot get off the hook themselves because they have got the company into trouble in these circumstances.

**Senator S.W. Pallett:**

I accept that if there is one person who is clearly responsible for the issue, but if a company is really poorly run there must be some responsibility on those directors that they are ensuring that their officers are running the company responsibly.

**Deputy Director, Revenue Jersey:**

I am sure that must be right, but what I am not sure about is whether or not that would be a tax offence or something broader.

**Senator T.A. Vallois:**

So it may be the responsibility of the company itself to hold whoever is responsible, if it was evidenced, so it would be more of an employee matter and a civil case.

**Comptroller of Revenue:**

I think in general the intention here is to make sure that the different kinds of officers and scenarios that could be at fault are within the ambit of the law, so that the Attorney General can consider the facts and decide whether or not to proceed.

**The Minister for Treasury and Resources:**

Whether to proceed under company law as opposed to individual.

**The Connétable of St. Peter:**

Let us move to vexatious and spurious appeals. The new power for the Comptroller to effectively strike out an appeal made with no admissible grounds is itself subject to appeal. New Article 28A allows the commissioners to consider this as a paper case unless they decide to list the case for a hearing. Their review would be based on consideration of the notices and such other relevant documents as are provided to them. There is no right for the appellant to be heard in person. There is no specific requirement for the commissioners to ensure they have received information from both parties to the appeal. Do you believe that there are sufficient taxpayer safeguards in this new process?

**Comptroller of Revenue:**

Could you refer to the paragraph there?

**The Connétable of St. Peter:**

New Article 28A.

**Comptroller of Revenue:**

Sorry, I did not recognise that language. It is probably best that I start by giving a little background. The Commissioners of Appeal is the first tier of judicial considerations of decisions of Revenue Jersey, which are technically decisions of the Comptroller. It is an entirely free process. The commissioners get a small stipend. All of the administration up until a certain point is dealt with by my officers. There is a clerk to the commissioners who is an advocate. The system going back to our earlier discussions is based on old U.K. practice, which stopped I think in about 2005. The system will go altogether at some point. The Jersey Law Commission has made recommendations for changes. In the meantime what we are trying to do is make the process work as smoothly as we can and make sure that we are using best time of the commissioners. A number of things we have been trying to do are about simplifying the process and making sure that the commissioners are only dealing with matters of fact and law. At the moment the commissioners are getting an awful lot

of cases basically where taxpayers have refused to provide information and the commissioners effectively slap them on the hand and ask them to do better.

[13:30]

To some extent, that will be taken care of by the civil information power. It is also the case that a number of taxpayers who for whatever reason want to play along or prevaricate can make quite spurious appeals to the commissioners. To be honest, there are not many of them but they do occur and in discussion with commissioners we did agree to try to stem that. This measure is an attempt to do so but, as you rightly say, if I have the power to refuse an appeal that decision itself is appealable. It is a bit like snakes and ladders. It may well be the case that I can dissuade a taxpayer from making an appeal that has no grounds in law, and they may well accept that, but equally if they are hellbent on going to the commissioners they can do so. You were speaking there about the commissioners' procedures, I think.

**The Connétable of St. Peter:**

Yes, it appears that they do not have to ensure that there is information available from both parties, so from the appellant in effect.

**Comptroller of Revenue:**

Honestly, I am not aware of that and from what I have seen, and I have seen one very recently, the clerk of the commissioners usually writes out to appellants asking them effectively for what is called a statement of case.

**The Connétable of St. Peter:**

In practice, I think that is what one would expect, even if the law does not specifically say it.

**Comptroller of Revenue:**

Yes.

**The Connétable of St. Peter:**

Unless there has been a misunderstanding in the interpretation.

**Deputy Director, Revenue Jersey:**

We can certainly check that for you. Are we looking at the new ...

**The Connétable of St. Peter:**

Yes.

**Deputy Director, Revenue Jersey:**

It does say that they may make a determination of the appeal against refusal by the Comptroller on consideration of the notices and such other relevant documents as are provided to them. I am sure that is intended to encompass the fact that they would write out to the person who has appealed to say: "You will have to give me some information about why you think the Comptroller has got it wrong."

**The Connétable of St. Peter:**

I think it is simply that it does not specifically say that.

**Comptroller of Revenue:**

A great deal of the commissioners' procedures are not set out in statute, but the commissioners are entirely free to organise their own affairs. How they operate is down to them, and, as I say, I saw one very recently where the appellant had received a notice from the clerk of the commissioners asking for effectively their statement of case in evidence. I am certainly aware of a case where the clerk of the commissioners with the commissioners probably did refuse to hear something on the grounds that it was not an appealable matter, but I think that is entirely for them. To some extent that is what this law is passing to me, that I have the ability to do that, but, as I say, if a taxpayer really wants to get to the commissioners because of the way the system operates they would effectively then go and appeal my decision not to let them go to the commissioners. I admit there is a degree of curiosity in that.

**The Minister for Treasury and Resources:**

They remain anonymous, do they not?

**Comptroller of Revenue:**

Yes, anyone who appeals to the commissioners has the right of anonymity. At the moment, if somebody goes to the Royal Court the Royal Court can meet in camera.

**Deputy S.M. Ahier:**

If the information goes to commissioners does the Comptroller, whoever the Comptroller is, put forward information as to the reasons for not allowing the appeal to go forward?

**Comptroller of Revenue:**

Yes, it does operate very much like any other part of the judicial process. Normally there is a hearing and the taxpayer makes their case and we make ours, and the commissioners decide. Depending on what the commissioners decide either side has the right to appeal to the Royal Court.

**The Connétable of St. Peter:**

Thank you. I will now pass to Senator Pallett for question 4.

**Senator S.W. Pallett:**

This is around some clarification around registration for G.S.T. Article 24 introduces a requirement for the Comptroller to register a person who is liable to be registered, whether or not the person has given notice of the requirement to be registered under paragraph 3 of the G.S.T. tax law. It states that: "Where the Comptroller is satisfied that a person is liable to be registered, the Comptroller must register the person (whether or not the person has notified liability in accordance with paragraph 3)." However, in P.51/2021 this is described as "allowing", this is in the explanatory note, the Comptroller to register the person who has not but should have notified the Comptroller that they should be registered. Can the Minister or the Comptroller confirm whether Article 24, as drafted, requiring the Comptroller to register the person is correct and whether the explanatory information is incorrect?

**Comptroller of Revenue:**

I think it is 6 of one and half a dozen of the other. As the tax administrator I am obliged by my oath and the law to ensure that people comply with the law. If in the course of compliance activities one of my officers did find a business that did have a turnover of over £300,000 in supplies of goods and services that were liable to G.S.T. then I should be able to and, as a matter of duty, I ought to require them to register for G.S.T., otherwise they are competing in the marketplace unfairly and unlawfully. I am afraid this is another area where the law is just a little bit defective. Most jurisdictions' tax law would allow me to register someone who was evading tax.

**Senator S.W. Pallett:**

So, in essence, the more severe wording is the correct wording?

**Comptroller of Revenue:**

It allows me to do it and I want to do it, but from your point of view as the States Assembly I would imagine that you think it is my duty to do it, or that I must do it. I think the words of the legislation are right.

**Senator S.W. Pallett:**

And the explanatory note could be slightly misleading?

**Comptroller of Revenue:**

It gives me the power to do it but I would imagine you would not wish me to do otherwise. The reality is that if somebody is trading above the turnover limit in taxable goods they ought to be registered for G.S.T.

**The Minister for Treasury and Resources:**

Because as you quite rightly say, Comptroller, it is not fair on the others who have registered.

**Senator T.A. Vallois:**

Can I clarify? Understanding what it says in the legislation whereby if you are satisfied that if a person is liable they must register, is there or would there be a duty, whether that is through oath or requirements in guidelines or good practice, to notify that entity that you have done so?

**Comptroller of Revenue:**

Absolutely. If we have found somebody doing this we will be in very active discussions with them, as you can imagine, and we would be saying: "You are going to be registered." There would be other consequences; at the very least there would be late registration fees and late registration back taxes. That is even if we decide to treat it civilly. I suppose this is a good example where if we found someone who had been trading unlawfully for several years the Attorney General may well wish to take them into the Royal Court.

**Senator T.A. Vallois:**

Where does the onus lie in terms of the degree of the severity, in terms of any payments or anything like that, that might happen? So if somebody has not registered for a couple of years, now this law comes in, you must register them because this law says you must, but where does the onus lie on ensuring that in the shortest time possible that takes place? Does the onus lie on the individual or will it lie on you as the Comptroller?

**Comptroller of Revenue:**

In general, the G.S.T. law says that when a person becomes aware that they are approaching being registerable, so for example let us say a business for several years has had a turnover of about £280,000 and then it suddenly starts to creep over £300,000, the law basically says that they should notice that and they should register. Obviously, circumstances arise where businesses creep over £300,000 and for whatever reason they do not notice. A very good example is during the great storms of whenever it was an awful lot of slaters crept over the registration threshold. We are obviously very sympathetic to that. They were busily mending people's roofs, and they did not notice their turnover had exceeded the V.A.T. (value added tax) threshold in the U.K., and I am sure it was the same in Jersey. That is where officers are expected to apply discretion. If somebody has crept over the turnover they would probably be offered the opportunity just to straighten up and register

voluntarily. If however we did find a business that had been trading well over the £300,000 for several years it is harder for them to plead ignorance of the law.

**Senator S.W. Pallett:**

For those businesses that hang around that £300,000 threshold is there a process for them to deregister each year or reregister each year? How would that work?

**Comptroller of Revenue:**

Yes, you can deregister. It is probably worth saying that an awful lot of businesses that trade in goods will register even if they are below the turnover. That is largely because goods are imported and they will face import G.S.T. It is usually in people's interests to register voluntarily if they are trading in goods. It is more likely a scenario where you are trading in services or you are perhaps doing something like roofing, tiling and that sort of thing.

**Senator S.W. Pallett:**

For those uninitiated in G.S.T. law who might be listening, is the threshold the only criterion for registering?

**Comptroller of Revenue:**

It is one of the primary ones. G.S.T. is chargeable on the supply of goods and services in Jersey by a taxable person and a taxable person is essentially someone who has that turnover of £300,000. There are obviously various exemptions, so there are certain businesses that are exempt from G.S.T. That does not mean what it sounds like to most people. If you are exempt from G.S.T., and for example a dentist would be exempt, they bear the costs of G.S.T. on the goods they buy in but they do not charge G.S.T. on their services, so they end up being the person who pays G.S.T. rather than the person with toothache.

**Deputy S.M. Ahier:**

Thank you. I will move on to publication of appeal decisions. The new arrangements with the publication of an appeal case in an anonymised form do not include any information or background about who will select cases for publication, on what basis and when they would be published in relation to the date of the hearing. Could you explain a little more about this provision and how it would work in practice?

**Comptroller of Revenue:**

Yes. The commissioners are entirely independent. They arrange their own business and decide their own rules of engagement. When they have this power, if it is passed by the Assembly, it will be down for the commissioners to decide exactly how they do operate it, and obviously within the

constraints that are set out in that law. I think what is most likely to happen, and we do occasionally meet with the commissioners and the clerk to discuss these things, they will be looking at cases to see if they have any value as a precedent, so they will be determining whether it is something that is worth the generality of taxpayers knowing. If it is, they will instruct the clerk to publish it. I believe the proposal is that the clerk will ask the Judicial Greffier to publish them on the same website where Royal Court decisions are published. I am not exactly clear what will happen. As I say, I am aware of discussions on that and if the law is passed I will certainly clarify with the clerk of the commissioners what they intend to do.

[13:45]

Clearly, where they reach a determination that has a wider value to taxpayers and tax agents they would have to redact it to the extent that it does not identify the taxpayer and then it would be published on a website.

**Deputy S.M. Ahier:**

Do you believe that all cases will be published, as is the case in the U.K.?

**Comptroller of Revenue:**

I think cases that are about matters of fact and the law are more likely to be published than the body of cases I referred to earlier, which are simply about delay, where taxpayers have failed to meet their obligations and the commissioners are chivvying them along. Even cases that involve matters of fact may not have precedential value, but certainly matters of law are more likely. There are not significant numbers every year. As I say, it is I think down to them which they publish as the law is drafted.

**Deputy S.M. Ahier:**

So if there are not a significant number even if they are redacted then it is quite clear to the general public who the appellant is.

**Comptroller of Revenue:**

No, because the public do not know who appeals, so even up to the Royal Court taxpayer confidentiality is observed. People do not know who is appearing before the commissioners and if the commissioners publish a determination it will be done in such a way that people would not know who had appealed.

**Senator T.A. Vallois:**



Will there be a consideration against data protection law, but a public interest test in terms of publication?

**Deputy Director, Revenue Jersey:**

If it helps it is not how it works. Under the old system in the U.K. there were general commissioners who were a bit like the commissioners here, and special commissioners who were sort of qualified tax judges effectively, and most of the general commissioners' decisions were not published because they did not have precedent value. So in that sense I suppose broadly there would be a public interest but it is more with that lens of is there something in this case that other taxpayers could helpfully know. That is what the commissioners will be thinking, and I have no doubt at all they have a legally qualified clerk.

**Comptroller of Revenue:**

Yes, the clerk is ...

**Deputy Director, Revenue Jersey:**

Yes, they will be taking advice each time to ensure that this is not just something that is just purely on the facts. If it is just about the facts there is no precedent value, but I do not know that they would call it a public interest test in the way you would think of the broader public interest outside of tax specifically.

**Senator T.A. Vallois:**

Just on to record retention. In the existing law Article 25 requires the retention of records by individuals for 2 years. Under this particular amendment, it is Article 35, it proposes a power to amend the period for retaining records by regulation. Can you indicate when and how this power could be used, or is expected to be used?

**Comptroller of Revenue:**

Yes, and I think Fiona may know a little bit more about this than I, but I think in the changes that were made in recent years in the Revenue Administration Law we inadvertently removed a provision in the G.S.T. law, as memory serves, which does allow for different record-keeping periods in different circumstances, and this restores the ability to do that. Generally speaking, for most compliant taxpayers we are trying to make sure the burden of record keeping is kept to a reasonable period. There can be certain types of business and certain types of reliefs and allowances where we potentially do need to ask for a longer period of retention, so that is essentially restoring something that was inadvertently removed.

**Deputy Director, Revenue Jersey:**

That is exactly it; it is an accidental omission from G.S.T. law when the Revenue Administration Law was created, and it reinstates the provision.

**Senator T.A. Vallois:**

Six years?

**Deputy Director, Revenue Jersey:**

I mean, it can be different things but, yes, 6 years we have in here for certain powers.

**Senator T.A. Vallois:**

Will any amendments to the required retention period be weighed against the fact that powers to amend assessments in cases of carelessness extend to up to 5 years after the due date for the return?

**Comptroller of Revenue:**

Generally speaking we try to ensure that record-keeping requirements are aligned with assessing powers, and if we do encounter a situation where we are trying to look back and the record-keeping provision has extended, it is highly unlikely that any further action will be taken unless there were serious grounds to believe that there had been deliberate tax evasion. So in certain cases you could go back quite a long way if there had been deliberate tax evasion, regardless of record-keeping papers, and if necessary you would reconstitute business records in whatever way you could.

**Senator T.A. Vallois:**

I think what is always important - especially with any tax changes because of the responsibility lying on the individual to be able to provide these returns in an appropriate way and in an appropriate manner - is the ability to explain this in a real layperson's point of view. The publicity around this should this be agreed, how will that be presented to taxpayers?

**Comptroller of Revenue:**

I think the generality of taxpayers on the whole will only look at this if they are subject to a compliance intervention. What we are increasingly doing when we are starting a compliance intervention is providing information to the taxpayer about what to expect. I think as this develops that is what we will be doing increasingly. We did make a start - and this was very much at the request of the panel and some of your witnesses a couple of years ago when we started looking at some of these measures - by drafting a code of practice for the compliance interventions. So we do now have a code of practice published which deals with a lot of these issues, and it starts to talk about information powers as well while flagging that there are still amendments to come. I think we are

getting better at doing that and we will probably be doing more as a result of this if, as you say, it is put through.

**Senator T.A. Vallois:**

The reason why I ask, I think from my point of view it is always more helpful to be proactive rather than reactive, and whether there is an opportunity at the next time you send assessments out or whatever that might be, to maybe doing more face-to-face dialogue with individuals who are not quite clear on a number of changes that have happened over the years.

**Comptroller of Revenue:**

Well I think 2 points arise from that; first, when we next put tax returns out there will be an awful lot of material in there about the P.Y.B. (prior year basis) changes and independent taxation and we will probably be snowing taxpayers with additional information if we are not careful. I think at the end of the day so few taxpayers get compliance interventions that I would be wary of putting too much on everybody's doormats (a) because it is not necessary and (b) because it worries some people unnecessarily. The reality is still - and we do our compliance work on a risk-based approach - that very few taxpayers will ever be subject to any form of compliance intervention. With the move to online filing, which was when we started reducing the record retention period, we sent a very clear message to taxpayers not even to send us papers anymore. A lot of taxpayers still do; they will send us mortgage certificates, they will send us proof about their children and things like that. But the message we have been putting out - and this was done with the online filing launch - is that taxpayers do not need to evidence the things they are putting in their tax return unless we ask them to evidence it, and that is only happening on a very limited basis. So most people now can make an online tax return or a paper tax return, they do not need to attach a lot of evidence to it, and we will only go back to them about a tax return if it is incomplete or if there is a genuine area of uncertainty we want to clarify with them. So I would not advocate putting a lot of information out to the whole population about compliance changes, but I think when we are doing compliance interventions - particularly with unrepresented, smaller taxpayers - that we will obviously lead them through that sensitively and give them information. All represented taxpayers in Jersey, their tax agents are pretty well-versed in this and the code of practice to a very large extent is what we have agreed with them as the way we will work with them.

**The Minister for Treasury and Resources:**

Also, Tracey, you mentioned face to face and explanations in layman's terms; of course this has not been possible for this last year.

**Senator T.A. Vallois:**

No, but I am thinking maybe next year we might be in a nicer position. I am trying to be optimistic.

**Comptroller of Revenue:**

Yes, but seriously next year we have quite a lot to do with the general taxpayer population, both about independent taxation and the P.Y.B. repayment term, so those are going to be the 2 big broadcast publications next year. We will be doing public events and so on all around that.

**The Connétable of St. Peter:**

On to information notices. In regard to the new information notices the proposed law requires the Comptroller, or a person authorised for the Comptroller for this purpose, to sign the notices. Do you consider this is a sustainable way to cover this? Would it not be more appropriate to require the Comptroller to authorise issue of the notice without being required to physically sign it? This would allow you to issue notices digitally in the future.

**Comptroller of Revenue:**

I think there has been a general view in Jersey for some years that some powers are so significant that by putting a wet signature on a piece of paper it demonstrates that the Comptroller has personally thought about it and personally actioned it. In fact an information notice I think we would say could be signed by the Comptroller or an Assistant Comptroller or the Deputy Comptroller. I do like to be satisfied that when we are obliging a taxpayer to provide information that we really have done everything we commit to do. So one of the things I have generally said is that we would not routinely issue an information notice until 60 days had elapsed from our first request. The vast majority of taxpayers co-operate with the tax authority perfectly voluntarily. We ask them for information; they do provide it. So information powers are always ... well there are 2 purposes; the first is if a taxpayer really does not want to co-operate you have to have the power to compel them. But equally we often have to ask for information from third parties - the obvious example there is all of the international tax work we do, although that is not connected with this - and that is where you are giving a third party legal cover effectively. Now, I think issuing information notices electronically in the future would be a good place to go probably, but at the moment we issue so few information notices it is not a big deal and, as I say, it does at least give you the assurance that the senior managers in the administration do believe it is the right thing to do. Information powers are always a little sensitive, particularly with the tax agent community; it is quite a big thing particularly if you are going direct to taxpayers to demand information so it is right we are sensitive around it. As I say, we do not want it to be a very significant part of the way we do business because the vast majority of people just do co-operate voluntarily.

**The Minister for Treasury and Resources:**

There is provision for appeal though, is there not?

[14:00]

**Comptroller of Revenue:**

Yes, so if we issue a production notice, an information notice, and the taxpayer still does not want to comply then there are an awful lot of safeguards built into the power.

**The Connétable of St. Peter:**

Thank you. I will pass on to Senator Pallett for questioning.

**Senator S.W. Pallett:**

This is I think our final question and it is following on from information notices again. The recipients of third party notices are liable to prosecution if they disclose information relating to third party notices to any person, however, the third party notice may include a warning to this effect. Do you agree that this should be a requirement of third party notices so that recipients are aware of the risks so there cannot be any misunderstanding?

**Comptroller of Revenue:**

This is what is called a no tipping off provision, and an information notice might legitimately include one or it might not need to include one. Now, for example, if one were writing to a bank about a taxpayer as part of a criminal investigation, and it was important that the taxpayer did not know, then you would put in that provision that you may not tell the taxpayer. Equally if it does not matter you would not include it. It is important that there is the choice of whether or not to include a no tipping off provision. This civil information power is largely going to be used in Jersey in respect of civil cases so I would not expect it to be a big issue here. It is far more significant in the international tax area where an overseas tax administration asks us to secure information, and if their taxpayer is under criminal investigation then they may make it very clear to us that the third party institution is not allowed to tip off the taxpayer. But generally speaking, in Jersey law we work on the basis that we will notify taxpayers when we are going to third parties.

**Senator S.W. Pallett:**

I did not realise it was around tipping off provisions; now I know.

**Deputy S.M. Ahier:**

It just mentions "a third party notice may include", should that not read "must"?

**Comptroller of Revenue:**

I think "may" is absolutely right because, as I say, generally speaking we would not insist on no tipping off. I mean, no tipping off effectively means if it is a bank and a bank's client that the bank

may not tell the client, so it is legitimate that in some cases there will be a no tipping off provision but in most cases it will not be necessary, so “may” is absolutely right rather than “must”, yes.

**Deputy S.M. Ahier:**

Just going back to Articles 31 to 33 with regard to making payment on tax, it mentions it extends the imposition and payment of interest to late payments of remittances: “The amendments also prevent interest from being charged or paid to individual taxpayers.” Now, presumably anybody who has overpaid their tax will not receive interest on any refunds they are given. Is that reasonable, and does that relate to I.T.I.S. (Income Tax Instalment System) payments?

**Deputy Director, Revenue Jersey:**

If you refund an overpayment to a person then you must pay simple interest on the refund for the period, and then it sets out what that is. That is Article 34 in the law when it comes into force.

**Comptroller of Revenue:**

Just for context, it is worth saying that the interest charging provisions were put into the finance law about 2 years ago. The Minister has not activated them, partly because of COVID and all that. We are developing the systems to allow us to charge the interest when it is activated. The intention is that where tax is paid late there will be an interest rate and where it is repaid late there will be an interest repayment supplement. So, generally speaking the interest charging will be symmetrical, albeit at different rates. It is very normal practice for example for the tax authority to charge a higher rate of interest on late paid tax and then to pay a slightly lower rate on repayment; all that is yet to be established in the law. So the law allows interest to be charged, the next thing the Minister will bring to the Assembly at some point in the future is a framework for charging interest which will probably be linked to the Bank of England base rate, then rates will be set within that framework. But, yes, repayment supplement will be part of the scheme.

**Deputy Director, Revenue Jersey:**

There is a *de minimis* of course - sorry I should have said that - which may have been the point you were making, that if the repayment is £300 or less then interest will not attach to that.

**Comptroller of Revenue:**

And equally both ways; no interest charged, no interest repaid.

**Senator S.W. Pallett:**

Is that higher rate in effect a form of penalty?

**Comptroller of Revenue:**

No, the provisions allow for simple interest, which is commercial restitution for late payment, but the law does also provide for a supplementary interest on very late paid tax. Now, one of the things the Minister has asked us to do before that is brought in is review the late payment supplement that has historically been charged in November/December time, which is actually 10 per cent of the sum outstanding. I think the likelihood is we are going to look at options to reduce that if effectively a punitive rate of interest were brought in, but that is something we have yet to review. So the first stage will be just to introduce simple interest on late payment.

**Deputy S.M. Ahier:**

Now we have a question from our adviser, Rebecca Benneyworth.

**Panel Adviser:**

Could I just go back to third party notices? I understood what you said, Comptroller, about not having a no tipping off message if you did not feel that was necessary on the notice. The only thing I just wanted to query is that in (6) of that new Article 27C which is about the third party notices, in (6) it does specify that a person who knowingly and without reasonable excuse discloses to someone that there has been a notice commits an offence. So it seems to set up a mandatory defence in any case, and what I understood from you was that you felt that in some cases that would not be necessary. I understand the context to that but it seems as if the law is at odds with that because what the law is doing is saying it will always be an offence, which is really then why you need that warning, whether or not you feel strongly about it or not it, (6) is carried forward as it is so they need to know.

**Comptroller of Revenue:**

They will know whether or not they are allowed to inform the second party, as it were, or the first party. If the information notice has a no tipping off provision and yet they still tip off I think this simply provides the basic right to make a reasonable excuse defence, as I understand it, which I think is necessary in public notice.

**Deputy Director, Revenue Jersey:**

If there was not a notice I think they would be saying: "We would accept they had a reasonable excuse to disclose" because they would not have been told not to.

**Comptroller of Revenue:**

I am sorry; does that answer your question?

**Panel Adviser:**

Yes, I think so but I am just checking (6) seems to be automatic, that anybody who does it without a reasonable excuse is committing an offence, and I just wanted to be sure that somebody would be absolutely clear that that is what they are at risk of.

**Comptroller of Revenue:**

Yes, and that would always be on the face of the notice if there is a no tipping off provision. We have such notices now in the international tax sphere, and indeed in the criminal sphere, section 16A, so a no tipping off provision information notice would routinely say: "You may not notify your client of this request. If you do notify your client you need to be aware that you are committing an offence and are liable to a penalty." So that would always be in the notice so that people are on notice of the jeopardy.

**Panel Adviser:**

Thank you very much.

**Senator T.A. Vallois:**

I was just going to challenge slightly on the interest argument, so the reason why the department would pay less interest than the person who has to pay the overpayment. The reason why I want to challenge it is I do not think it is sufficient just to say that has just been the case, and I want to understand why it is deemed appropriate and what would create the onus on the department to make sure they paid that money back if it is not the same as the person that is required to pay the overpayment?

**Comptroller of Revenue:**

The situation is quite convoluted in some respects because it is actually quite hard at times to know whether someone has "overpaid" their tax because an awful lot of people do and do so deliberately. So, notwithstanding all of the P.Y.B. changes we are making at the moment, a lot of people deliberately start overpaying tax as they approach retirement in order to mitigate that. There are a lot of people ... well I say a lot, I do not know exactly how many, but there are quite a lot of people who build up an overpayment so that they will get something back. They treat us a bit like a savings scheme, which is fine I suppose. It is very clear when tax has not been paid because there is a due date and there is an amount paid and we know it has crossed the line. Overpayments are a bit more complicated to establish and people can manipulate, so if they are using us as a savings scheme it is very important that we are not offering a better rate of interest than the banks.

**The Minister for Treasury and Resources:**

But also does it not change the I.T.I.S., or they can do it to change their I.T.I.S. rate?



**Comptroller of Revenue:**

Yes, so there are all sorts of factors I suppose that mitigate against having the same rate of interest on tax debt and tax overpayments. That is almost a very characteristic feature of all banking and money-lending operations that there is a spread between an interest rate paid to the depositor and the interest charged to the debtor. What is envisaged is that the general provision that will allow interest to be charged and given is in the law already. The next thing that needs to go into the law is effectively a framework for the spread, and it will probably say something like where interest is going to be charged on tax debt it will be at the Bank of England rate plus X per cent, and then there will be a lower limit for the repayment. So that is one of the things you will be asked to agree in the future. Then within that the Minister for Treasury and Resources would set rates. As I say, you could, I think, make an argument for absolute symmetry on those rates but what you may find is that people do try to play the system if you are offering a better rate than the banks.

**Senator T.A. Vallois:**

I just thought I would ask the question because I do not think it is always clear and it is useful to have an explanation between the 2 reasons why. There are so many other questions I could ask but I know I would keep you here all afternoon so I am not going to go down that road.

[14:15]

**Deputy S.M. Ahier:**

We have come to the end of our questions. Unless there is anything else you would like to add, Minister?

**The Minister for Treasury and Resources:**

No, I do not think so. When is this debate? I think it is on 20th July? Hopefully by then we will have been able to explain it and, as the Comptroller said, we are doing Parish Hall public gestures to do exactly as you say and explain it face to face because it is complicated, there is no doubt about it. But we have got to get this law through in order to go through what we have just explained to you and tighten up the penalty and appeal system, but still allowing the public to appeal if they feel they have been unfairly treated.

**Deputy S.M. Ahier:**

I thank everyone for attending.

[14:16]