STATES OF JERSEY

Jersey

DRAFT INCOME TAX (PAYMENT OF 2019 LIABILITY) (JERSEY) REGULATIONS 202-

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Lodged au Greffe on 10th February 2021
by the Minister for Treasury and Resources
Earliest date for debate: 20th April 2021

STATES GREFFE

REPORT

Introduction

The States Assembly adopted P.118/2020 on 4th November 2020, following which all personal taxpayers were moved from a prior year basis (PYB) of payment to a current year basis (CYB) with effect from the year of assessment 2020.

As part of the transitional arrangements, the 2019 income tax liability of affected taxpayers was deferred, with the terms for payment of that liability to be provided for in separate Regulations. The primary law specified that those Regulations must be made by the States Assembly no later than 31st March 2021.

The Minister for Treasury and Resources now lodges the Regulations, which provide for the flexibility and certainty that taxpayers require.

The two main options

Most taxpayers will have the choice of two main options. These are:

1. Option 1: Paying the 2019 liability over a period of up to 20 years; or
2. Option 2: Paying after retirement (subject to having financial arrangements in place).

Taxpayers will need to make their decision no later than 30th September 2024. An additional option for those aged 65 or over is detailed below.

Option 1 – payment over a period of up to 20 years

The 20 year period relates to the years 2022 to 2041. However, no payment will be required until 2025. This flexibility will ensure that those taxpayers who want to start paying the 2019 income tax liability soon can do so; others who wish to wait three years would have that alternative option.

Regulation 3 of the draft Regulations requires a payment of 1/17th of the 2019 income tax liability for each year from 2025 to 2041. This amount is cumulative, meaning taxpayers will be able to 'front load' payments in order to pay less in later years. There would be an option to pay on a frequency that suits the taxpayer, e.g. monthly, quarterly, or annually.

If a taxpayer fails to make a payment, no financial penalties nor interest would be imposed but the overdue amount would become legally collectible (and therefore become a 'debt'). As is currently the case, Revenue Jersey would first seek to contact the taxpayer to arrange payment. No legal action to collect the debt would be taken without prior constructive engagement with the taxpayer. This is consistent with Revenue Jersey's existing policies regarding personal income tax debt.

Taxpayers will be able to pay over a shorter period if they wish (or even immediately if they have the means), although the dedicated online portal will not be available until 2022-2023 at the earliest.

Payment holidays

Option 1 requires payment over a significant period of time, during which it is likely that a taxpayer's circumstances will change. If the commitment to make regular payments towards the 2019 liability cannot be kept, *Regulation 4* permits one payment holiday of up to one year. This payment holiday would pause payments for a year, after which payments would need to resume at a slightly higher rate (in order effectively to ‘catch up’).

If a taxpayer’s circumstances are such that a 12 month pause is insufficient, they may apply to Revenue Jersey, demonstrating financial hardship, for a further payment holiday. If that application is refused, taxpayers can appeal that decision to the Commissioners of Appeal.

Earlier communications explained that ‘affordability tests’ would be required to determine whether a reduction in payments would be justified. Affordability tests, which would have required taxpayers to provide a detailed income and expenditure statement, are no longer considered necessary because the payment terms offered in these Regulations allow for significant flexibility.

Payment holidays do not reduce the amount of the 2019 income tax liability.

Option 2 – paying after retirement

The second main option, as set out in *Regulation 5*, is to pay off the 2019 income tax liability no later than 12 months after reaching pensionable age. This option is presented following submissions made by taxpayers that they had already considered the issue of a latent tax liability (especially at retirement) and had put financial plans in place.

Making the election

A form will be available online and in paper form. The deadline for making the election would be 30th September 2024. If no election is made, taxpayers would default to Option 1.

Evidencing financial arrangements

If a taxpayer elects for Option 2, they would need to be able to demonstrate they have appropriate financial arrangements in place by providing paperwork, for example evidence that they are paying into a pension scheme. The draft Regulations ensure Revenue Jersey would be able to adopt a risk-based approach to checking compliance to help safeguard the 2019 income tax liability, so it is not put at unnecessary risk of default.

Different kinds of financial arrangements would be acceptable. In some cases, for example where the 2019 liability is relatively small, it would be sufficient for a taxpayer to demonstrate they have a savings account with a balance greater than the 2019 liability. It is expected that many taxpayers would look to use the tax-free lump sum that can be made from a pension scheme at retirement. In some cases, taxpayers might have other capital assets they intend to sell at retirement. These Regulations permit a great degree of flexibility for taxpayers, but also provide for oversight to ensure the financial arrangements are maintained. Taxpayers choosing this option might be subject to a review of their arrangements and are required under *Regulation 7* to tell Revenue Jersey if their arrangements change.

Revenue Jersey cannot provide financial advice nor recommend financial products; taxpayers should satisfy themselves that any financial product they use is properly regulated. Tax will not be written off in the event that a financial arrangement collapses.

Switching between options

It is recognised that taxpayers’ circumstances will change during the ensuing years. Under *Regulation 6* and *Regulation 8*, taxpayers can apply to switch options (if switching from Option 2 to Option 1 then additional payments might be necessary, depending on when the request is made). In general, one switch would be permitted, but the Comptroller would be able to consider exceptional requests on a case-by-case basis. No repayment of tax would be made to taxpayers switching from Option 1 to Option 2.

Flexibility for pensioners

The Minister recognises that pensioners are not afforded the same flexibility as other taxpayers, since they are unable to choose Option 2. Therefore, under *Regulation 11* pensioners may apply to pay the 2019 liability out of their testamentary estate, if they can demonstrate that paying by instalment would cause financial hardship. Pensioners are defined as those individuals who were 65 or over on 31st December 2020.

Events that will crystallise the 2019 liability

If a taxpayer permanently leaves Jersey, or otherwise becomes non-resident, before the 2019 liability is fully paid, *Regulation 9* provides that the outstanding tax will become due and payable upon departure. That does not necessarily mean the amount would need to be paid in full before or immediately following departure. As is currently the case, the taxpayer and the Treasury would be able to come to a ‘time-to-pay’ arrangement, and no enforcement action would be taken as long as the payment agreement was kept.

Under *Regulation 10*, non-residents whose 2019 liability arose by virtue of property owned in Jersey would be required to pay the 2019 liability in full upon the sale of the property (or properties), if the sale occurs before 31st December 2041.

If a taxpayer has passed away during the period starting when the 2019 liability was suspended and the coming into force of these Regulations, the 2019 liability will become due and payable 12 months following the taxpayer’s death; if a taxpayer passes away after these Regulations come into force, the 2019 liability would become due and payable under *Regulation 12* upon death. These measures will help ensure that the administration of an estate is not unduly prolonged.

Taxpayers who choose not to engage with Revenue Jersey could face a demand for the full 2019 liability. Under *Regulation 15*, a demand can be issued if a taxpayer fails to make a payment for a period of three years.

Trusts, estates, and partnerships

In creating the move from a prior year basis to a current year basis (CYB), certain legal persons (not individuals) are affected in the same way as individuals. As a result, the 2019 income tax liability is deferred for trusts, estates, and general partnerships. This is because the tax treatment of these entities falls within the ‘personal tax’ regime rather than the corporate tax regime.

The policy intention of the accelerated move to CYB was to help *individuals* with the short-term effects of the pandemic, and in the longer-term with the latent tax liability that often crystallises at retirement. These are not issues that affect trusts and estates. Therefore, *Regulation 13* creates a requirement for these entities to pay the 2019 income tax liability no later than 6 months after the Regulations come into force. There is an exception for a trust that is an interest in possession trust in which a beneficiary is entitled to the income of the trust and is in receipt of the income directly.

The position regarding general partnerships is different, as there is a connection between a partner’s personal income tax liability, and the assessment made on the partnership. Revenue Jersey is conscious that should general partnerships be handled in the same way as individuals, there would be an increased likelihood that the circumstances of the partnership would be different in 20 years' time, potentially leading to difficulties between existing and future partners.

Regulation 14 allocates the 2019 income tax liability of the partnership to each partner, to be paid alongside their personal 2019 income tax liability. This proportion would be allocated in accordance with the partnership agreement. While the Treasury's right to pursue tax on a joint and several basis would be effectively waived, this approach provides certainty to the taxpayer by providing a specified figure allocated to them.

Appeals

The draft Regulations contain provisions where the Comptroller is required to approve an application or make a decision. *Regulation 16* ensures that taxpayers can appeal against any decision made by the Comptroller under the Regulations.

Higher incomes in 2020

These Regulations are concerned solely with the payment of the deferred 2019 income tax liability. However, there may be circumstances where a taxpayer's income materially increased in 2020 compared to 2019. In these circumstances, the tax paid by ITIS in 2020 is unlikely to be sufficient to cover the full 2020 income tax liability (because it would have been based on the 2019 income).

The Minister expects taxpayers whose incomes have increased to be able to afford the associated income tax liability, especially in cases where that increase in income is by virtue of a wage rise. Nevertheless, the Minister recognises that some taxpayers' incomes increase because of their circumstances (e.g. those returning from a career-break or parental leave). In these cases, therefore, Revenue Jersey will adopt a sympathetic approach where a taxpayer is able to demonstrate financial hardship as a result of the move to a current year basis (CYB) of payment and, on a case-by-case basis, will consider 'smoothing out' ITIS effective rates over a longer period of time.

Financial and manpower implications

As detailed in the main proposition (P.118/2020), one of the effects of this change is that while additional revenue is not raised, around £330m is accelerated into General Revenues over a period of c.25 years.

At this stage, it is difficult to reach an estimate for the cost of the implementation of this project. Over its lifetime, it is likely to require the average equivalent of one additional member of staff, in addition to the computer system changes (depending on the chosen collection option £200,000-400,000) and associated communications costs (c.£100,000). It is estimated at this time therefore that the total cost will be in the region of £400,000 to £600,000 in set-up costs with around £50,000-£60,000 for additional annual staff costs over around 20 years (with a degree of front-loading tapering off over time). This may require an allocation from the Reserve by the Minister for Treasury and Resources in 2021 and inclusion in subsequent Government Plans.

EXPLANATORY NOTE

These Regulations, if made, will determine when taxpayers whose 2019 income tax liability has been deferred must pay that liability. The deferral of the 2019 income tax liability for some taxpayers was a result of the removal of the prior year basis method of paying tax.

Regulation 1 is an interpretation provision, defining “2019 liability”, “Law” and “pensionable age”.

Regulation 2 provides that these Regulations apply to those whose 2019 liability has been deferred.

Regulation 3 provides the general rule for the payment of the 2019 liability. If no other Regulation applies, a person must pay one-seventeenth of their 2019 liability by the end of 2025, and a further one-seventeenth every year until the end of 2041. (A taxpayer may choose to pay more in an instalment, or to pay the liability earlier. Regulation 3 provides for the minimum required payments.)

Regulation 4 allows a person who is required to pay under the general rule to apply for payment holidays. A payment holiday allows the person to miss the payment that they would otherwise need to pay in a year. Instead, the required payments for future years are increased so that the liability will still be paid in full by the end of 2041. Each person is entitled to one payment holiday. The approval of additional payment holidays is at the Comptroller’s discretion.

Regulation 5 allows a person to elect to pay the 2019 liability 12 months after the date on which the person reaches pensionable age (“deferred payment”). A person makes an election by making a declaration in writing to the Comptroller that, to the best of the person’s knowledge, the person will have sufficient means to pay the 2019 liability 12 months after the person reaches pensionable age. The Comptroller must receive the election by 30th September 2024.

Regulation 6 allows a person who has missed the election deadline under Regulation 5 to apply to pay the 2019 liability by deferred payment. The application process is similar to the election process but is subject to the approval of the Comptroller. If a person’s application is approved, the person must still pay the first payment due under Regulation 3, as well as any further amount that has fallen due under Regulation 3.

Regulation 7 requires a person who has elected, or received approval, to pay by deferred payment to inform the Comptroller if the person’s circumstances change so that they will no longer have sufficient means to pay the 2019 liability 12 months after the person reaches pensionable age. Regulation 7 also allows the Comptroller to review the arrangements of a person who is to pay by deferred payment. If the Comptroller considers that the person will not have the means to pay by deferred payment, the Comptroller may require the person to instead pay the liability by annual instalments so that it is paid in full by the end of 2041.

Regulation 8 allows a person who has elected, or received approval, to pay by deferred payment to apply to no longer pay by deferred payment and to instead pay the liability by annual instalments so that it is paid in full by the end of 2041.

Regulation 9 provides that a person who becomes non-resident before the person’s 2019 liability would otherwise be due and payable must pay any remaining amount of the liability on the date that the individual becomes a non-resident. If the person becomes non-resident in the 6 months before these Regulations come into force, the liability is instead due 6 months after these Regulations come into force.

Regulation 10 applies to non-residents whose 2019 liability arises from rental income from Jersey properties and who sell the properties before the 2019 liability would otherwise be due and payable. Regulation 10 requires those people to pay any remaining amount of their liability on the date that the properties are sold. If a person sells the properties in the 6 months before these Regulations come into force, the liability is instead due 6 months after these Regulations come into force.

Regulation 11 allows a person who was 65 years or older on 31st December 2020 to apply to pay some or all of the person's 2019 liability upon the person's death if paying the liability under the otherwise applicable Regulation would cause the person to experience financial hardship.

Regulation 12 provides for the payment of the 2019 liability of a person who dies before the person's 2019 liability would otherwise be due and payable. If a person dies before these Regulations come into force, the person's liability is due and payable 12 months after these Regulations come into force. If a person dies after these Regulations come into force, any unpaid amount of the person's 2019 liability is due and payable on the date of the person's death.

Regulation 13 requires trusts and estates to pay their 2019 liability by 6 months after these Regulations come into force. Regulation 13 does not apply to trusts that are interest in possession trusts in which a beneficiary is entitled to the income of the trust and is in receipt of the income directly.

Regulation 14 provides that the 2019 liability of a partnership is divided between the partners and is due and payable by each partner as if it formed part of the partner's own 2019 liability.

Regulation 15 allows the Comptroller to demand immediate payment of the 2019 liability of a person who is required to make annual payments if the person does not pay an amount due within 3 years after the date that the amount is due and payable.

Regulation 16 allows a person to appeal against a decision made by the Comptroller under these Regulations in the same way as a person would appeal against an assessment.

Regulation 17 gives the title of these Regulations and provides that they come into force 7 days after they are made.

Jersey

DRAFT INCOME TAX (PAYMENT OF 2019 LIABILITY) (JERSEY) REGULATIONS 202-

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Jersey

DRAFT INCOME TAX (PAYMENT OF 2019 LIABILITY) (JERSEY) REGULATIONS 202-

Made	*[date to be inserted]*
Coming into force	*[date to be inserted]*

THE STATES make these Regulations under paragraph 23 of Schedule 5 to the Income Tax (Jersey) Law 1961[1] –

1 Interpretation

In these Regulations –

"2019 liability" means the amount of income tax assessed (or to be assessed) for the year beginning 1st January 2019;

"Law" means the Income Tax (Jersey) Law 1961[2];

"pensionable age" has the same meaning as in the Social Security (Jersey) Law 1974[3].

2 Application of these Regulations

These Regulations apply to a person whose 2019 liability is deferred by paragraph 23 of Schedule 5 to the Law.

3 Due dates for payment of 2019 liability – general

If no other Regulation applies, one-seventeenth of a person's 2019 liability is due and payable annually, with –

(a) the first one-seventeenth due and payable on 31st December 2025; and

(b) the final one-seventeenth due and payable on 31st December 2041.

4 Payment holidays

(1) A person whose 2019 liability is due and payable under Regulation 3 may apply to the Comptroller for a payment holiday for a year.

(2) The Comptroller –

(a) must approve a person's first application for a payment holiday; and

(b) may approve an application by the person for any subsequent year.

(3) If the Comptroller approves a person's application for a payment holiday for a year, –

(a) the person is not required to pay the amount that would otherwise be due and payable by 31st December of that year; and

(b) the remainder of the person's 2019 liability is due and payable in equal instalments on 31st December each year, –

(i) starting on 31st December of the year after the year to which the payment holiday applies, and

(ii) ending on 31st December 2041.

5 Election for deferred payment (by 30th September 2024)

(1) A person may elect to pay the person's 2019 liability by deferred payment.

(2) An election must –

(a) be in writing;

(b) be received by the Comptroller no later than 30th September 2024; and

(c) contain a declaration that, to the best of the person's knowledge, the person will have sufficient means to pay the 2019 liability 12 months after the person reaches pensionable age.

(3) If a person elects to pay by deferred payment, the person's 2019 liability is due and payable 12 months after the date on which the person reaches pensionable age.

6 Application for deferred payment (after 30th September 2024)

(1) A person who has not made an election under Regulation 5 by 30th September 2024 may, at any time after that date, apply to pay the person's 2019 liability by deferred payment.

(2) An application must –

(a) be in writing; and

(b) contain a declaration that, to the best of the person's knowledge, the person will have sufficient means to pay the 2019 liability 12 months after the person reaches pensionable age.

(3) The Comptroller may request evidence in support of the declaration.

(4) The Comptroller may approve an application if the Comptroller is satisfied that the person will have sufficient means to pay the 2019 liability 12 months after the person reaches pensionable age.

(5) If the Comptroller approves the application, –

(a) the amount of the person's 2019 liability due and payable on 31st December 2025 under Regulation 3 remains due and payable on that date;

(b) any further amounts that were due and payable under Regulation 3 before the person applied remain due and payable in accordance with that Regulation; and

(c) the remainder of the person's 2019 liability is due and payable 12 months after the date on which the person reaches pensionable age.

7 Deferred payment – change of circumstances

(1) This Regulation applies to a person who –

(a) has made an election under Regulation 5; or

(b) has had an application approved under Regulation 6.

(2) A person must inform the Comptroller, as soon as practicable, if the person's circumstances change in a way that means that they will no longer have sufficient means to pay the 2019 liability 12 months after the person reaches pensionable age.

(3) The Comptroller may, at any time, request evidence that a person will have sufficient means to pay the 2019 liability 12 months after the person reaches pensionable age.

(4) If the Comptroller considers that a person will not have sufficient means to pay the 2019 liability 12 months after the person reaches pensionable age, the Comptroller may require the person to pay the 2019 liability under this Regulation.

(5) If the Comptroller requires a person to pay the 2019 liability under this Regulation, –

(a) the Comptroller must notify the person, in writing, of the requirement; and

(b) the person's 2019 liability is due and payable in equal instalments on 31st December each year, –

(i) starting on 31st December of the year that the notice is issued, and

(ii) ending on 31st December 2041.

8 Change of payment methods – deferred payment to annual instalments

(1) A person who has made an election under Regulation 5 or had an application approved under Regulation 6 may apply in writing to the Comptroller to no longer pay by deferred payment.

(2) If the Comptroller accepts the application, the person's 2019 liability is due and payable in equal instalments on 31st December each year, –

(a) starting on 31st December of the year that the notice of acceptance is issued; and

(b) ending on 31st December 2041.

9 People becoming non-residents

(1) This Regulation applies if an individual who was resident in Jersey on 31st December 2019 becomes non-resident before the individual's 2019 liability is due and payable under another Regulation.

(2) Any unpaid amount of the individual's 2019 liability is due and payable 6 months after these Regulations come into force or on the date that the individual becomes a non-resident, whichever is later.

10 Non-residents in receipt of rental income

(1) This Regulation applies if –

(a) an individual was a non-resident on 31st December 2019;

(b) the individual's 2019 liability arises solely from rental income from Jersey property; and

(c) before the 2019 liability is due and payable under another Regulation, –

(i) the individual sells the property, if the rental income is from one property, or

(ii) the individual sells all of the properties, if the rental income is from more than one property.

(2) Any unpaid amount of the individual's 2019 liability is due and payable on the later of 6 months after these Regulations come into force and –

(a) the date that the individual sells the property, if the rental income is from one property; or

(b) the date that the individual sells the last property, if the rental income is from more than one property.

11 People aged 65 or older facing financial hardship

(1) A person who was 65 years of age or older on 31st December 2020 may apply to pay some or all of the person's 2019 liability upon the person's death.

(2) An application must be in writing and contain a declaration that the person would experience financial hardship if required to pay the person's 2019 liability in accordance with the applicable Regulation.

(3) The Comptroller may request evidence in support of the declaration.

(4) The Comptroller may approve an application if the Comptroller is satisfied that the person would experience financial hardship if required to pay the person's 2019 liability in accordance with the applicable Regulation.

(5) In considering whether a person would experience financial hardship, the Comptroller may consider –

(a) the person's reasonable living expenses;

(b) any assets the person owns or has an interest in; and

(c) any other factor the Comptroller considers relevant.

(6) If the Comptroller approves the application, the person's 2019 liability is due and payable in accordance with the approval.

12 Deceased people

(1) The 2019 liability of a person who died before these Regulations come into force is due and payable 12 months after these Regulations come into force.

(2) Any unpaid amount of the 2019 liability of a person who dies after these Regulations come into force but before the full amount of the person's 2019 liability is due and payable under another Regulation is due and payable on the date of the person's death.

(3) An amount due and payable under this Regulation is a debt due from and payable out of the person's estate.

13 Trusts and estates

(1) This Regulation applies to a trust or estate, except for a trust that is an interest in possession trust in which a beneficiary is entitled to the income of the trust and is in receipt of the income directly.

(2) The trust or estate's 2019 liability is due and payable 6 months after these Regulations come into force.

14 Partnerships

A 2019 liability that arises from an assessment under Article 74 of the Law (partnership statements and assessments) is –

(a) divided between the partners in the same proportion as the share of the partnership profits that each partner was entitled to for the 2019 year of assessment; and

(b) is due and payable by each partner as if it formed part of the partner's own 2019 liability.

15 Taxpayers in default

(1) The Comptroller may, in writing, demand immediate payment of a person's 2019 liability if –

(a) some or all of the person's 2019 liability is due and payable under Regulation 3, 4(3)(b), 6(5)(a), 6(5)(b), 7(5)(b) or 8(2); and

(b) the person does not pay an amount due under one of those provisions by 3 years after the amount is due and payable.

(2) If the Comptroller issues a demand under this Regulation –

(a) the amounts of the person's 2019 liability that have already become due and payable under another Regulation remain due and payable from the original due dates; and

(b) the remainder of the person's 2019 liability becomes due and payable on the date the demand is issued.

16 Appeals

(1) A person may appeal to the Commissioners against a decision made by the Comptroller under these Regulations by giving notice in writing to the Comptroller within 40 days of receiving notification of the decision.

(2) Part 6 of the Law applies, with the necessary modifications, to an appeal under paragraph (1) as if it were an appeal against an assessment.

17 Citation and commencement

These Regulations may be cited as the Income Tax (Payment of 2019 Liability) (Jersey) Regulations 202- and come into force 7 days after they are made.

ENDNOTES

Table of Endnote References

[1] *chapter 24.750*
[2] *chapter 24.750*
[3] *chapter 26.900*