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Corporate Services Scrutiny Panel
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By email

Dear Simon

**Corporate Services Scrutiny Panel
Review of the Draft Revenue Administration (Jersey) Law**

I am writing in response to your letter dated 18 December 2018 regarding the above. Thank you for giving EY the opportunity to comment on the proposed law. For the avoidance of doubt, the points I have set out below I have also raised directly with the Comptroller of Revenue.

Overall, and consistent with my response to the consultation on the proposed law, I am supportive of the introduction of a Revenue Administration law. Indeed it is necessary to introduce such a law as the administration elements of the current law are outdated, can lead to uncertainty and they lack certain protections for taxpayers. As an example, at present there is nothing in the law that determines the timeframe in which an enquiry can be made. Therefore a taxpayer's tax affairs are essentially open for an infinite period resulting in a taxpayer never really knowing whether the Taxes Office will raise queries in future. Most other jurisdictions require the tax authorities to raise enquiries within a specified window, at the end of which the taxpayer's tax affairs for a particular year of assessment are considered to be agreed (other than, of course, in the case of fraud).

My general concern with the current draft legislation is that it is addressing only part of the required administration law and it focuses on providing additional powers to the Comptroller of Revenue without adequate protection for taxpayers. It also does not address the current lack of taxpayer protection such as the example noted above. I appreciate that the full administration law is being introduced in stages. The Comptroller has provided a written commitment to consider certain issues in future (see next paragraph). However, speaking frankly and based on previous and recent experience of non-delivery on commitments, I am concerned about this piecemeal approach and the ability to deliver the further commitments.

To expand on this point, heads of tax from the 'Big 6' accounting firms met with the Comptroller and Treasury Minister on 17 December 2018 to discuss this draft law. I was unable to attend but received written feedback from the Comptroller and I discussed the meeting with some of those who did attend. The main concern amongst all of the Big 6 is the increase in power of the Comptroller without adequate protection for taxpayers. The Comptroller has agreed to provide us with 'something by the end of January' in relation to the proposed 'bigger picture' of the tax law reform, including a focus on introducing taxpayer protections. However, this will not be known before the draft Revenue Administration Law is debated by the States on 29 January 2019. It is therefore difficult to fully support this specific piece of law without knowing what protections and further changes may be introduced.

That said the Comptroller provided the following additional information following the meeting:

As far as safeguards and certainty for taxpayers goes, the key safeguards remain internal reviews on request by senior tax officers; independent reviews by the Commissioners of Appeal; and ultimately by the Royal Court. We said we would address (in later phases of the RAL) the following:-

- *A reduced enquiry window for tax enquiries (except where fraud/evasion is in play) to provide greater certainty for agents and taxpayers.*
- *A smarter process for closing tax appeals without having to revert to the Commissioners of Appeal*
- *Looking at our production-of-information powers (probably in terms of some form of appeal against production notices to the Commissioners)*
- *Give the Commissioners a remit to oversee tax enquiries (effectively to close them down if deemed unreasonable)*
- *More clearly segregate the working of the Commissioners from the administration of Revenue Jersey (this may need to be synchronised with Law reform Commission recommendations to create States-wide appeals tribunals on a more judicial basis).*

Reference is made to the independence of the Commissioners. There are concerns among the tax agent community that the Commissioners are not fully independent. This is recognised in the final bullet above but in the meantime this does not provide adequate taxpayer protection.

Turning to some specific concerns about the law:

- Article 26 gives the Comptroller significant powers without any ability for a taxpayer to appeal against a notice to produce records. This allows the Comptroller to embark on fishing expeditions with no protection for the taxpayer which is unacceptable. I note that this is mentioned in the Comptroller's response above, but that just commits to "looking at" the power rather than committing to introduce the ability to appeal. This would be a relatively easy amendment to the draft law and it is not clear why this was omitted.
- The draft law introduces late payment and overpayment interest, the rates of which will be specified by the Minister although not yet decided. I support the introduction of interest on late paid and overpaid tax and I have no concerns with this being determined by the Minister, provided the interest rates are commercial. In the consultation, there was reference a rate of 8% above the BoE base rate on late paid tax and a rate equal to the BoE base rate for overpaid tax. It is appreciated that the rates have not yet been decided but if the Minister specifies rates at this level, I am concerned about the high rate for late paid tax as well as the significant difference between the rate applied to late paid and overpaid taxes. The rate applicable to late paid tax and the difference between the rates on underpaid and overpaid tax is significantly higher than in many other jurisdictions. I would therefore prefer the law to stipulate either a percentage above BoE base rate or a cap on the rate of interest that can be charged, as well as a closer alignment of the rates on late paid and overpaid taxes.
- There is already a surcharge on late paid tax in certain situations at a rate of 10% of the unpaid tax. This is not being removed, and in fact the timing of when this surcharge is triggered has been accelerated for large taxpayers. The proposal is for the surcharge plus interest to apply is potentially punitive and uncommercial, especially when the interest rate could be high, and out of line with other major jurisdictions. It is not clear why it is necessary to have both a surcharge and punitive interest.



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In summary, I accept that a tax administration law has to be introduced to ensure that taxpayers that avoid their responsibilities can be more easily addressed. However I have real concerns about the piecemeal approach, with no guarantee of future changes, and the lack of protection for compliant tax payers.

Yours sincerely

Wendy Martin
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For and on behalf of Ernst & Young LLP