



Grant Thornton

An instinct for growth™

Mr S Spottiswoode
Corporate Services Scrutiny Panel
States Greffe: Scrutiny
Morier House
St. Helier
Jersey
JE1 1DD

14 January 2019

Guernsey Office
Lefebvre House
Lefebvre Street
St Peter Port
Guernsey C.I.
GY1 3TF

T +44 (0) 1481 753400

Jersey Office
Kensington Chambers
46/50 Kensington Place
St Helier
Jersey C.I.
JE1 1ET

T +44 (0)1534 885885

www.grantthorntonci.com

Dear Simon

Revenue Administration Law – Call for evidence

I refer to the Call for Evidence in relation to the proposed Revenue Administration Law and as stated in our earlier submission concerning the 2019 Draft Budget we are disappointed that the draft Revenue Administration Law (“RAL”) simply looks to increase the powers of the Comptroller with no safeguards whatsoever for the taxpayer or any reform of the Jersey tax system to align the current law to the agreed principles of being, low, broad, simple and fair.

In the introduction to the proposed RAL it promises that this is the first tranche of new law but does not expand on when taxpayers may expect to receive further tranches or what these tranches may actually contain. Given the long standing history of promising much but delivering substantially less (see below) in the area of taxation reform, we would strongly recommend that the RAL is rejected unless and until firm proposals accompany the RAL that deal with the safeguarding of taxpayers and the re-writing of the Income Tax (Jersey) Law 1961, as amended, (“Tax Law”) to bring the whole Jersey tax system up to date.

The Tax Law is now nearly 60 years old and its roots go back to the early 1900’s, and is simply no longer fit for purpose. It is disappointing that a paper on Tax Policy was produced in 2014 but other than seek to increase the Comptroller’s powers most of the other matters seem to have been ignored in the draft RAL. These issues were highlighted again in the response to the consultation entitled “Tax Compliance Framework” that closed in June 2017.

Although little issue is taken with most of the proposals laid out within the draft, the RAL should only form a small and single part of a more detailed plan and without a clear and firm description of what that plan entails and an agreed timeline to the implementation of the remaining parts, one would not support the RAL being approved. We would strongly suggest that the Assembly cannot rely on such bland statements such as “built upon over coming Budgets” or “in due course Ministers will also propose.”

Grant Thornton Limited
Registered in Jersey No. 98924. Registered Office: Kensington Chambers, 46/50 Kensington Place, St Helier, Jersey, JE1 1ET

Grant Thornton refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. Grant Thornton Limited is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.



It is also noted that in the draft RAL that many terms are undefined at present, with no guidance being issued as a foreword to the Law. We would request a firm commitment to publish the general definition of such words as “carelessly”, “deliberately”, “discovery”, among others, before any such Law was introduced so the taxpayer is certain of his position. It is noted in the Consultation response that the Comptroller recognises that clear definitions of each category of behaviour are clearly important and therefore we are disappointed that these notes do not presently accompany the proposition.

As stated above, we are frustrated by the lack of commentary and guidance surrounding the proposals and we are concerned that without such detailed commentary the position of the taxpayer is unclear. There are already a dozen instances within the existing Tax Law whereby the tax position is determined solely by “in the Comptrollers’ opinion” and we would suggest that this is totally unacceptable. The tax system should be clear for all, and one should not allow further Comptroller interpretation in the Tax Law, as currently envisaged under RAL. One should not have a tax system that relies on the arbitrary unpublished opinion of the person charged with, and remunerated for, the collection of taxation.

Where guidance does exist much remains unpublished, for example, the Commissioners of Appeal have handed down judgements that would assist in the interpretation of the Tax Law but this remain unpublished though the Comptroller does often seek to rely on these judgments which are not open to the taxpayer. Furthermore certain guidance remains in draft form so cannot be fully relied upon (Distribution Rules – Taxes Office Guidance Notes – Draft 11 February 2013). It is accepted that a legal document such as the Tax Law will be open to various interpretation but it would save time and cost if the interpretation of the Comptroller was clearly documented.

In relation to our earlier comments concerning the delivery of promises we would cite three examples from the last three budgets:

- Budget statement 2017 (18 October 2016) - Review of administrative concessions. The Taxes Office will commence a review of the range of concessions it currently allows and, where appropriate, make recommendations to the Minister for Treasury and Resources for putting some of them on a statutory footing. This is still awaited.
- Budget statement 2018 (03 October 2017) - Review of interest tax relief. The Tax Policy Unit will issue a technical issues paper on the future tax deductibility of interest in the context of business activity before the end of 2017. This remains unpublished and the taxpayer currently has to deal with 19 separate concessions (which are being reviewed – see above).
- Budget statement 2019 - Personal tax consultation and stamp duty review before the end of November 2018 – not published.

In addition to the above, taxpayers have been promised a review of independent taxation, residence and the prior year basis of assessment for many years.

The new law is entitled the Revenue Administration Law but it does not contain certain elements that we would consider to be essential to the administration of a modern tax system. The position with regard to a statutory enquiry window was raised as part of the response to the Tax Compliance Framework Consultation and it is noted that the Taxes Office, despite clearly stating that they “will give serious consideration to the introduction of a statutory enquiry window”, have not included any draft proposals. If the RAL is to work as envisaged and the tax system is to be fair we would expect equal weight being given to reforms that benefit the taxpayer and those that solely benefit the Taxes Office and therefore again stress our disappointment that this serious consideration has not found its way onto the statute book.



Grant Thornton

An instinct for growth™

In addition, besides noting there is no assessing window to provide certainty for taxpayers that their affairs have been agreed, there is no agreed Taxpayers Charter listing the rights and obligations of Revenue Jersey towards taxpayers. The proposed changes to the Commissioners of Appeal within RAL suggest there is still no statutory right for a taxpayer to appeal to the Commissioners should the Taxes Office simply go "fishing" without raising an assessment. Connected to this there are no provision for the awarding of costs where the Comptroller has acted poorly (although the recent comments concerning the powers of the Ombudsman are noted and one would hope that their powers would be extended to the tax system). In fact the interest / penalty regime proposed within the RAL offers no incentive for Revenue Jersey to deal with cases (especially repayment cases) quickly and efficiently.

It may be that the Taxes Office do not currently have the resources to implement all the changes necessary to bring the Tax Law up to date but we would suggest that it is unfair and unjust to simply concentrate on increasing the powers of the Comptroller without a firm timetable to cover the other much needed, and equally critical, reforms.


In summary we would argue that a complete overhaul of the Jersey tax system is required. It is accepted that this will require specialist manpower and will represent a cost but one would argue that the present position cannot be permitted to continue and therefore request that additional resources be earmarked.

As seen from the examples above, there would appear to be no sanction should reviews or tax changes not be followed through and therefore we would suggest that the RAL be rejected in its entirety until the whole system is reformed or until Scrutiny are satisfied that there are sufficient safeguards within the proposals that the other urgent matters will be dealt with quickly and efficiently.

Thank you for providing the opportunity to provide comments. Should you wish to further discuss any of the points raised please do not hesitate to contact me.

Yours sincerely

For Grant Thornton Limited



John Shenton
Director

Direct No: 01534 885866

E-mail: john.shenton@gt-ci.com