

STATES OF JERSEY



DRAFT TAXATION (EXCHANGE OF INFORMATION – AMENDMENT) (JERSEY) REGULATIONS 202-: COMMENTS

**Presented to the States on 28th June 2023
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

Following the lodging of [P.28/2023 Draft Taxation \(Exchange of Information – Amendment\) \(Jersey\) Regulations 202-](#) the Panel requested a briefing from Government officers and received this on 1st June 2023. To enable public discourse, the Panel also submitted questions to the Minister for External Relations (the Minister), receiving a response from the Assistant Minister on 23rd May 2023, with the ensuing correspondence published on the States Assembly website.¹ The Panel is presenting these Comments to help inform the Assembly’s debate, due to take place 4th July 2023.

Background

When a Third Country requests tax information from Jersey, the Minister for Treasury & Resources as the Competent Authority must be satisfied that the request is foreseeably relevant to the administration and enforcement of that Third Country’s taxes. In practicality the Minister for Treasury and Resources delegates these functions to the Comptroller of Revenue (the Comptroller).

In a recent case in the Royal Court (*Prahl & Triton v The Office of the Comptroller of Revenue*), the Court effectively quashed 2 notices to produce information which had been issued by the Comptroller, as Delegated Competent Authority, in pursuit of a request from the Kingdom of Sweden. The Royal Court took the view that the information requested by Sweden was not foreseeably relevant, essentially because Sweden had not yet finally determined whether the subject of the information was tax-resident in Sweden. As a consequence, this judgment left Jersey unable to comply with the Organisation for Economic Co-operation and Development (OECD) international standard for exchanging information on request with Third Countries with the OECD viewing Jersey law as being ‘out-of-step’ with the international standard of Foreseeable Relevance.

This had put at risk the Island’s ‘Compliant’ rating in future Peer Reviews for the OECD Global Forum. The Panel has been informed that this could risk Jersey as being assessed as ‘Non-compliant’ and being included in the so called ‘blacklists’ of some jurisdictions which could damage the ability of some of Jersey’s Financial Institutions to operate effectively, potentially damaging our economy.

During its briefing, the Panel was further informed that unless the matter was addressed, it would likely invite further challenges by taxpayers and their associates. This could either prevent outright or, at the very least, delay, the international exchange of information. The Panel was also informed that the proposed legislative approach was the only means of ensuring that Jersey could comply with the international standard.

The Panel has been informed that discussions with the OECD Secretariat have taken place and it has been confirmed that the proposed approach has been welcomed.

The Proposed Amendments

These draft Regulations would amend the following Regulations:

- [Taxation \(Exchange of Information with Third Countries\) \(Jersey\) Regulations 2008](#)
- [Taxation \(Double Taxation\) \(Jersey\) Regulations 2010](#)
- [Taxation \(Implementation\) \(Convention on Mutual Administrative Assistance in Tax Matters\) \(Jersey\) Regulations 2014](#)

¹ [Letter - Assistant Minister for External Relations to Economic and International Affairs Panel re P.28-2022 Exchange of Information Amendment- 23 May 2023](#)

The draft Regulations aim to clarify the international standard of “Foreseeable Relevance” – an important feature of exchanges of tax information under Jersey’s international tax agreements. It would also ensure that the international standard was set by the OECD in its Model Tax Convention on Income and Capital, including its Commentaries on the Articles of the Model Convention.

The Panel has also received confirmation that the draft Regulations will also make it clear that that tax residency does not need to have been finally determined by a Third Country before requesting information from Jersey that may help it to determine liability of a person to taxation in that Third Country - including determining the question of whether an individual might be resident in that country for tax purposes.

Protections

The Panel has questioned protections against the use of the draft Regulations by tax authorities to enable speculative requests for information that have no apparent nexus to an open inquiry or investigation, so-called “fishing expeditions”.

The Panel has been informed that the scope for exchange of information is cast very wide but specifically excludes fishing expeditions with an obligation falling upon the Comptroller, as Delegated Competent Authority, to satisfy himself that requests from overseas Governments are valid.

The Panel has been advised that the Comptroller would reject requests if not satisfied. However, it has been identified to the Panel that it would be more usual for additional information from Requesting Jurisdictions to be invited by the Comptroller to satisfy themselves that those requests are both valid and can be clearly expressed to those who receive Production Notices.

It has also been highlighted to the Panel that the persons upon whom a Production Notice is served continue to have the right to seek Judicial Review challenging the validity of any aspect of a Notice.

Consultation with Industry

The Panel was informed by the Assistant Minister that no formal consultation was undertaken on the draft Regulations, as this was not seen as appropriate given their clear intention to clarify the legal interpretation of the relevant international standard in Jersey. However, it was confirmed that the draft Regulations had been shared with some of the key stakeholders in the finance and legal sectors of our economy for informal comment.

The Panel was informed by the Assistant Minister that, in the view of the Government, the draft Regulations simply further clarify the existing international standard and that there was no expectation of any real impact on the current operation of the system of Exchange of Information on Request; and, in reality, most exchanges occur without objection.

The Panel undertook its own short call for evidence on the draft Regulations writing to the Law Society of Jersey and Jersey Finance Ltd.² Confidential responses received from these stakeholders confirmed that informal briefings with industry had been undertaken and that the draft Regulations had been forwarded by the Comptroller inviting any major comment or argument against them. The Panel has not received any indication of concern regarding the draft Regulations.

² [Letter - Economic and International Affairs Panel to Law Society of Jersey re P.28-2022 Exchange of Information Amendment - 16 May 2023](#)

[Letter - Economic and International Affairs Panel to Jersey Finance re P.28-2022 Exchange of Information Amendment - 16 May 2023](#)

Conclusion

The Panel welcomes the work that has been undertaken by the Minister and the Department and is supportive of the Amendment to these Regulations, noting that any delay in their adoption could have a detrimental effect on how Jersey is viewed by the OECD and other jurisdictions.