

Submission - Independent Taxation Review - John Shenton - 24th August 2021

Thank you for providing the opportunity to provide feedback on the proposition P.78/2021 – Income Tax (Amendment – Stage 1 of Independent Taxation (Jersey) Law 202- which has been lodged by the Minister for Treasury and Resources (“TM”)

As a Jersey tax practitioner with nearly 40 years’ experience of advising on Jersey taxation I am well aware of the challenges that Revenue Jersey currently face but I can only express my disappointment that the proposition, as lodged, will mean that two sets of identical taxpayers could face significantly differing tax bills from 2022 et seq.

On page 8 of the Proposition it would appear that the Law Officers may also have certain concerns otherwise it is difficult to understand why the comment “however it is noted in any event that States are given a wide margin of appreciation in the administration of taxes. In view of this

Throughout this long process the TM has always insisted that independent taxation for those who are currently disadvantaged would be introduced in 2022. This proposition fails to deliver independent taxation for those who are currently disadvantaged, from 2022. This proposition seems to be asking c4,000 taxpayers to continue to pay for Government inefficiencies and pay greater amounts of tax than identical taxpayers.

In reviewing some of the correspondence the TM has had with Scrutiny, the following are noted:

16 April 2020

“Reform with a view to meeting my commitment to introduce reforms to the current system of “married taxation” for the 2021 year of assessment; and independent taxation for the 2022 year of assessment – with transitional provisions to protect those who may be disadvantaged by an overnight change.”

22 May 2020

“As I said in my last letter, I have asked tax-policy officials to continue to prioritise the Personal Tax Reform with a view to delivering independent taxation for the 2022 year of assessment – with transitional provisions to protect those who may be disadvantaged by an overnight change.”

I am unable see why one needs to delay the introduction still further (except for internal operational reasons) and would like to understand from the TM why this change of approach and why this has occurred. If the delay is required I would have expected that there would be transitional provisions introduced for 2022 (as stated above) to protect those who will be disadvantaged by the delay from 2022 to 2023.

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Turning to the proposition itself it is noted that in the introduction it is stated that the ongoing reform would afford equal rights and responsibilities to all. This proposition proposes the reverse and therefore one is unable to understand that assertion within the introduction.

Under background the statement that “The Government Plan 2021-24 made a commitment to begin to introduce Independent Taxation for the year of assessment 2022” is factually incorrect. What the Government Plan actually says is that “It remains our goal to implement full independent taxation for the year of assessment 2022.” There is no suggestion whatsoever of a phased approach or favouring certain taxpayers over others.

The proposal then suggests the idea that independent taxation should be introduced in phases, beginning in year of assessment 2022 and concluding no later than year of assessment 2027, was decided in February 2021 by the Revenue Policy Development Board (“RPDB”). However there is no documentary evidence in the public domain to support this statement. A request has been made for the complete minutes of all RPDB meetings but I have, at date of writing, not received the same. The last published minutes being autumn 2019. It being noted that the Timeline and Records and Reporting as laid out in the agreed terms of reference of RPDB clearly suggest that it relates to the Government Plan 2020 – 2023 and that “minutes of meetings will be taken to ensure that a proper official record is maintained, and published as soon as practical and appropriate, subject to the relevant FOI exemption concerning policy under development.” It is further noted that Revenue Jersey referred to a “phased introduction of Independent Taxation” in a standard letter to taxpayers dated January 2021. One would appreciate some clarity around what has been decided and when those decisions were taken, especially in light of the statements made previously. One would also like to understand how this change of approach has been communicated to the States Assembly.

It is also concerning that there is no detailed information as to what exactly phases two and three are? Will these stages seek to disadvantage more groups of taxpayers through a phased introduction? What are the detailed plans about phases two and three? What is the timeline? Can we rely on what is currently printed on the Revenue Jersey website? Can we rely on what has been told to Scrutiny?

The current proposition favours certain taxpayers and disadvantages others. The possibly advantaged taxpayers are those couples who are married or in civil partnerships who had elected for separate assessments for the year of assessment 2020 and have subsequently elected to move into Independent Taxation. However it is noted that website ([www.gov.je/TaxesMoney / IncomeTax / Technical / Guidelines / Pages / SeparateAssessments.aspx](http://www.gov.je/TaxesMoney/IncomeTax/Technical/Guidelines/Pages/SeparateAssessments.aspx)) still conveys the message that electing for separate assessments makes no difference to the amount of tax you pay as a couple or to your ITIS effective rate. This statement was clearly made before the phase one beneficiaries made any election. This proposal would appear to make a retrospective change to the advice that has been provided previously (and still continues to be provided) to taxpayers. The disadvantaged taxpayers are certain taxpayers who cannot elect into Independent Taxation in 2022.

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It is noted, and referred to in various transcripts between Scrutiny, the TM and The Comptroller of Taxes that when it was suggested that joint and several liability for all liabilities was to be introduced, an election for independent taxation would remove this threat. The Comptroller at that time was very clear that such an election would bring no tax benefits, and by not making an election would assist the Comptroller in dealing with his outdated administration and bring the tax system more up to date. This proposal completely changes that position for a group of taxpayers and one would appreciate a statement from the Comptroller that the phased approach was not being considered when these statements were made.

The quantum of the disadvantaged group of taxpayers has already been identified by Revenue Jersey and disclosed to Scrutiny during several different hearings, so the position has been known for quite some time. The sole purpose of continuing to delay the introduction of independent taxation for these disadvantaged taxpayers seems to be for administrative convenience (or cash) in that “a smaller group will form a pilot study group to test communications and support and gather customer feedback to inform phases two and three.” As the amount of potentially disadvantaged taxpayers’ number c4,000 I would suggest that an extension of the target group to include these taxpayers would not be overly burdensome given the total amount of taxpayers. A lower earning second earner with two children and an average mortgage could be better off by over £4.5k – this is not an insignificant sum. This is a significant disadvantage.

It is noted that the proposition seeks to introduce new articles to allow all married individuals and civil partners who wish to elect for Independent Taxation – from year of assessment 2023 onwards – to do so by 29th July 2022. It would appear that these individuals will form part of the second phase of the introduction of Independent Taxation but the full details have yet to be published. I am uncertain as to why therefore one cannot simply elect now for the 2022 assessments (which will not be raised until 2023 – a minimum of some 18 months ahead). The tax return for the year of assessment 2022 not being due for completion until 31 May 2023 at the earliest. This election would provide a level playing field for the changes introduced and be in accordance with the statements previously made by the TM. One would request full details of why the disadvantaged taxpayers cannot be brought within the test group given the impletion date is some 18 months away.

I am surprised that given the size of government, the States of Jersey do not seem to have the technical resources to run a pilot study without creating tax advantages / disadvantages? Should not a pilot study have already been undertaken in-house before this proposition was lodged? It would appear that any disadvantaged taxpayer will remain in that position until later phases of Independent Taxation are introduced. It being noted that there is no firm suggestion / proposition / legislation of when or how this is to be achieved as one does not seem to be able to rely on all statements made to Scrutiny. It is also noted that there is a general election next year which may result in a change of TM. What assurances can be given to any disadvantaged taxpayer than their disadvantage will not continue for many years?

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I feel certain that if 2022 assessments are to be delayed (to cope with any extra administration) for a small amount of disadvantaged taxpayers then these taxpayers would prefer the assessment to be slightly delayed rather than for them to be permanently disadvantaged whilst others enjoy an advantage, although noting that both groups are identical in relation to all other parts of the Tax Law. I am certain that these taxpayers would happily overpay (as at present) and then seek a repayment of any tax over-charged.

Besides the clear change in timeline and policy, the proposition also appears to be inconsistent and incomplete in certain areas.

The draft Law suggest that “Elections must be made by both partners and are irrevocable” surely this still allows a single taxpayer to control the other to some degree. This would appear not to be truly independent.

The draft law does also not seem to have fully considered allowances / reliefs that are due. Is the intention to insist that ever taxpayer opens a joint account to ensure that “any individual is not able to benefit from more relief than the amount of childcare paid for by the individual”. If one spouse pays for household bills / mortgage out of their salary whilst the other pays for the child care from theirs is Revenue Jersey really going to seek to deny a just and reasonable apportionment? The proposition is silent in relation to all other allowances – how, for example, will joint mortgage interest relief be apportioned? How does Revenue Jersey propose to deal with this? Will these uncertainties also lead to greater administrative uncertainty and future delays?

For the avoidance of doubt, I am in favour of independent taxation and it is long overdue and if level playing field was created to allow every person to benefit from the changes, or for them to be disadvantaged (if they so chose to be) I would be fully supportive. However to select a certain group in preference to others, especially given the protestations of the TM and the Comptroller that there would be no advantage to electing is difficult to understand.

I can see no rationale (except economically and administratively to the States of Jersey) for introducing legislation where two identical families pay different amounts of tax. I suspect that the retort to Scrutiny from both the Comptroller and the TM will be that if we do not do this in stages then all changes will be delayed and a greater number of people will be disadvantaged. As Revenue Jersey are now at full employment capacity, I would ask Scrutiny to insist that the TM keeps her well documented promises of introducing “*independent taxation for the 2022 year of assessment – with transitional provisions to protect those who may be disadvantaged by an overnight change*” rather than move the goalposts at the eleventh hour to create a regime that openly discriminates against two identical taxpayers.

I fully understand from an operational point of view it may be advantageous to split this into smaller bite size pieces (previous experience clearly shows us that) but the discriminatory aspect of the proposed changes is more difficult to understand especially given all the relevant assurances over the last few years. By lodging this proposition I am not sure that the

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Government meets their own stated aims of taxation in Jersey being low, broad, simple and fair. These proposals are clearly not broad or fair.

Kind regards

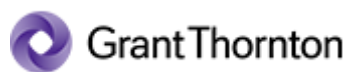
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