

Income Tax (Payment of 2019 Liability) Regulations Review

Corporate Services Scrutiny Panel Report

22nd March 2021

S.R.7/2021



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1. Chair's Foreword

This is the second time this panel has looked at this important change for Jersey taxation.

Following our input to the initial proposition and the Minister's public consultation, significant changes have been made in terms of the practical application of this change in policy. These are in the main to be welcomed, however the Regulations that are now before the Assembly no longer meet the original aims and objectives as proposed by the Minister last year.

We also must draw attention to the implications for divorcing couples and the financial and manpower costs that, in our view have not been adequately taken into account by the Minister and therefore may pose some further issues to her delivery of this proposal.

The Corporate Services panel often raises questions with regard restraint in public spending and the practicalities of pacing a work programme so as to protect the wellbeing of the staff whose job it is to manage the revenue system. Once again we urge the Minister to take our advice on board and exercise care in this area.

It has been a pleasure to work with our advisor, Rebecca Benneyworth again, her vast expertise and enthusiasm for tax has helped us to draw out some important points. This has resulted in us bringing two amendments that have been accepted by the Minister.

I would like to personally thank our advisor and the Scrutiny Team who have completed two significant pieces of work this week alone.



Senator Kristina Moore

Chair of the Corporate Services Scrutiny Panel

2. Executive Summary

The Draft Income Tax (Payment of 2019 Liability) (JERSEY) Regulations Review was established by the Corporate Services Scrutiny Panel (the Panel) to scrutinise proposed regulations made by the Minister for Treasury and Resources following the move for Prior Year Basis taxpayers onto a Current Year Basis system through Income Tax (Amendment No 46) (Jersey) Law 2021. The Panel was keen to gain a greater understanding of the implications of the regulations on taxpayers and public finances.

The Panel report outlines the background and timeline of Government decisions leading to the lodging by the Minister for Treasury and Resources of the Regulations. The report then examines the intention of the proposition and consultation. The next chapter considers the impact of the Regulations on prior year basis taxpayers and the final section considers the potential consequences of the Regulations across Government.

The Panel wrote to the Minister for Treasury and Resources and Comptroller of Revenue and held a public hearing with the Minister and Government Officers to obtain further information on the views and policy position on this issue. Many of the findings and recommendations which the Panel has made in the report are directly related to these meetings and information provided.

The Panel members also engaged with the public on social media and were able to receive a range of comments and written submissions from Islanders regarding their views on the proposed changes. Evidence that the Panel received has been published on the Panel's section of the States Assembly website.

The changes from the original proposals make payment of the 2019 liability more manageable for all taxpayers with a 2019 liability. However, as a consequence, collection of the liability has been extended over a very long period which will have a significant impact on Government projections of revenue inflows and management of Government expenditure. Appropriate risk management processes will be essential.

Taken as a whole, the proposals address many of the concerns expressed by taxpayers in the focus groups who examined the change to the PYB tax system. Although it was originally considered that an affordability test be implemented, the Regulations provide sufficient scope for flexibility over collection to obviate the need for such a test – which may have been considered intrusive and would certainly be resource intensive.

There are procedural and manpower implications to consider if the Regulations are agreed and the future introduction of independent taxation could present a technical challenge. The Regulations state Spouse A will carry the 2019 tax liability and it is unclear how this will be split when independent taxation comes into force or how the 2019 tax liability would be split if a couple divorce prior to independent taxation being implemented.

Furthermore, Revenue Jersey has been under resource pressure for a number of years and unless training and technical systems are updated flawlessly there will likely be further delays to administration of the island's tax system; although an increase in the number of returns filled online may help to alleviate this.

The Panel has therefore made a number of recommendations and lodged two amendments in relation to the Regulations which the Minister for Treasury and Resources should consider.

3. Findings and Recommendations

Findings

Key Finding 1

Regulation 11 may not properly take into account all of the personal circumstances of some pensioners with outstanding 2019 liabilities who may not have the ability to settle from their estate.

Key Finding 2

Taxpayers who will retire during the repayment term of the 2019 liability could be unable to make payments as they fall due under *Regulation 3*, as they will become reliant on a fixed income pension which may not include provision for the 2019 liability and could result in an inability to pay the remaining balance. This could result in a substantial liability for those due to retire in the next five years. No provision has been made in the Regulations for a final payment from the estate on death in this circumstance and the taxpayer is therefore reliant on negotiations with the Comptroller.

Key Finding 3

It is difficult at this stage to predict the impact of the Regulations on self-employed taxpayers, but some are likely to be detrimentally affected and unable to settle the 2019 liability.

Key Finding 4

The Regulations provide for the exercise of the Comptroller's discretion in allowing a second or subsequent payment holiday for the 2019 liability. The matters which would be taken into account are not prescribed by the Regulations, so affected taxpayers are not in a position to understand whether they are likely to benefit from these arrangements before applying, or to challenge a decision against them.

Key Finding 5

There is no mechanism presently set out to remind taxpayers who have elected for deferred payment of the need to build up funds to make payment when it falls due for the 2019 liability. This represents a risk to the collection of the 2019 liabilities at a future date.

Key Finding 6

Regulation 7(5) does not recognise that a taxpayer unable to pay the 2019 liability twelve months after reaching pensionable age may already have made some payments towards the liability.

Key Finding 7

The Regulations do not currently provide a mechanism for collection of the 2019 liability if deferred beyond 31 December 2041, if there is doubt concerning the taxpayer's ability to pay the 2019 liability as it falls due.

Key Finding 8

There is currently no satisfactory mechanism for dealing with a disputed tax liability between a couple in the event of divorce or dissolution of a civil partnership. The Regulations leave the husband or Spouse A liable for the 2019 liability. This poses a risk when couples divorce and may exacerbate the practical and financial difficulties the couple are facing. This could adversely affect the mental health of individuals and may also impact negatively on children of the relationship.

Key Finding 9

Budgeting for the revenue stream arising from the collection of the 2019 tax liability will be a challenging task for Treasury, and the amounts involved are significant. This could potentially add risk to the management of Government expenditure over an extended period.

Key Finding 10

Deferral by taxpayers of the 2019 tax liabilities under the Regulations presents a risk to public revenue and potential for unfair application of the Regulations between taxpayers.

Key Finding 11

The focus group feedback highlighted that a number of taxpayers with a 2019 liability would like the opportunity to see the outstanding liability and manage the basic administration of their liability themselves, ideally through a digital platform.

Key Finding 12

It is likely that there will be a number of taxpayers who are not able to confidently engage through a digital platform and will require additional assistance to manage their 2019 liability.

Key Finding 13

Collection by the Comptroller of Revenue of the 2019 liability from taxpayers in advance of new computer systems being developed and implemented by Revenue Jersey needs to be carefully managed to ensure it is correctly assigned to the liability.

Key Finding 14

The current estimate of one additional member of staff by Revenue Jersey to complete the administration may be inadequate. The Panel is concerned that the implementation of the Regulations will put additional pressure on the Revenue Jersey Team.

Recommendations

Recommendation 1

The Minister for Treasury and Resources must ensure that when an application is made in a case of hardship by a pensioner and it is identified that there are insufficient assets available from the estate to meet the 2019 liability, that financial projections will acknowledge the amount of the liability to be recovered and the amount which is irrecoverable.

Recommendation 2

The Minister for Treasury and Resources must provide clarity in the Regulations for those taxpayers who elect to pay the 2019 liability by Regulation 3 but will retire during the term of the liability and do not hold a pension with sufficient value to cover the remaining liability, and determine whether they can be considered as hardship cases and enable the remaining payment to be secured from the estate of those taxpayers.

Recommendation 3

The Comptroller for Revenue must apply powers considerably to self-employed taxpayers and clarify whether fluctuating rates of yearly payments aligned to income could be made by this category of taxpayer who elect to pay the 2019 liability by Regulations 3.

Recommendation 4

The Comptroller of Revenue must provide financial projections which reflect payment holidays taken by taxpayers in the accounting records of the 2019 liability.

Recommendation 5

The Comptroller for Revenue must ensure that the basis of decision-making on whether or not to approve a second or subsequent payment holiday is a matter of public record.

Recommendation 6

The Comptroller for Revenue must ensure that a form of reminder exists for taxpayers who have elected for deferred payment on a periodical basis, which will encourage taxpayers to review their financial position and ensure that they are building up funds to pay their 2019 liability when it falls due.

Recommendation 7

The States Assembly should agree the amendment to the Regulations lodged by the Panel which recognises payments already made on account of the 2019 liability to determine the amount due and payable under Regulation 7 (5) – payment by instalments of the liability previously deferred.

Recommendation 8

The States Assembly should agree the amendment to the Regulations lodged by the Panel to provide for a review of the collection of the 2019 liabilities to be carried out after 10 years and a report be presented to the States Assembly. The review should determine whether further amendments to the Regulations are necessary, particularly in connection with liabilities deferred beyond 2041.

Recommendation 9

The Minister for Treasury and Resources should consider amending the Income Tax law to provide that in the event of divorce or dissolution of a civil partnership the Courts may rule on the 2019 tax liability of the couple rather than the Comptroller of Revenue.

Recommendation 10

The Minister for Treasury and Resources must ensure that a formal system of reporting and review in relation to the 2019 tax liability and the collection of the revenue in a timely and efficient manner is established and adequately reflected in the Annual Report and Accounts.

Recommendation 11

The Minister for Treasury and Resources must ensure that the proposals for administering collection of the 2019 liability includes the development of a digital facility for taxpayers to manage the administration themselves which will include periodical notifications of the outstanding 2019 liability to taxpayers and confirm payments made towards a 2019 liability. The digital facility should be operational from when election of the 2019 liability is required.

Recommendation 12

The Comptroller of Revenue should establish and maintain internal controls and reporting mechanisms to ensure management and oversight of the 2019 liability and adequate resourcing to achieve delivery.

Recommendation 13

The Minister for Treasury and Resources should reconsider the manpower and financial implications if these Regulations are adopted to ensure propriety and regularity responsibilities under the Public Finances (Jersey) Law 2019 have been fulfilled adequately.

4. Introduction

1. The Corporate Services Scrutiny Panel (the Panel) monitors the policy and actions of Government, specifically Ministers, relevant to its remit. A review of Draft Income Tax (Payment of 2019 Liability) (JERSEY) Regulations 202-,¹ launched by the Panel on 18th February 2021, was considered by the Panel to be a matter of public interest as per the Scrutiny and PAC Proceedings: Codes of Practice.

Background and Context

2. Income Tax (Amendment No. 46) (Jersey) Law 2021 [“the Income Tax Law Amendment”] was adopted by the States Assembly on 4th November 2020.²

The Amendment to the Law contained the legislative measures required to remove the prior-year basis (“PYB”) method of paying personal income tax and moved all personal taxpayers on to current year basis method of paying personal income tax (“CYB”) from 2020. The Amendment to the law was enacted in two stages:

Stage 1 – On Adoption of the Amendment to the Law (4th November 2020)

- Cancellation of the 30 November 2020 payment on account and reconfiguration of the ITIS effective rate calculations.
- Suspension of the 2019 tax liability.
- Transfer of the payment made towards 2019 against the 2020 liability: and
- Allowance for the creation of Regulations that would set out the payment terms for the 2019 liability.

Stage 2 –The Regulations setting out the 2019 liability payment terms which need to be agreed by the States Assembly by 31st March 2021.

3. A review of the Draft Income Tax (Amendment No.46) (Jersey) Law 202- was completed by the Corporate Services Scrutiny Panel [“the Panel”] and a report [[S.R.7/2020](#)] containing findings and recommendations was published by the Panel on 30th October 2020 to inform the States Assembly debate.³ The Ministerial Response [[S.R.7/2020 res.](#)] to the Panel’s report was presented to the States on 14th December 2020.
4. The key areas of concern highlighted in the Panel’s report included:
 - The split of the 2019 debt between married couples and civil partners on the introduction of independent taxation or on divorce.
 - The potential impact on lending decisions by mortgage lenders and the potential impact of this debt on mortgage lending to affected taxpayers.
 - The impact for individuals in relation to payment structure over the term of the proposed agreement.
 - The impact for retired taxpayers.
 - The impact of other taxation and social security measures; and,

¹ [Draft Income Tax \(Payment of 2019 Liability\) \(JERSEY\) Regulations 202- \[P.9/2021\]](#)

² [Income Tax \(Amendment No. 46\) \(Jersey\) Law 2021](#)

³ [Draft Income Tax \(Amendment No. 46\) \(Jersey\) Law 202- \[P.118/2020\]](#)

Draft Income Tax (Payment of 2019 Liability) (JERSEY) Regulations Review

- Consequences from a public finance, manpower, systems, and economic perspective.
5. The consultation on the Income Tax Law Amendment to bring all taxpayers on to a Current Year Basis (CYB) highlighted concerns among affected taxpayers about the proposals for paying the frozen 2019 liability. Feedback from focus groups supported and gave further context to these concerns.
 6. As a result, the initial Income Tax Law Amendment proposals were changed by the Minister for Treasury and Resources to provide a much longer time period during which the 2019 liability would be payable and to address concerns of taxpayers currently in retirement with limited (and fixed) annual income.
 7. In January 2021, the Minister for Treasury and Resources briefed States Members and the Panel on the proposed Draft Income Tax (Payment of 2019 Liability) Regulations.
 8. Following the briefings in January with States Members and the Panel the Minister for Treasury and Resources lodged the Draft Income Tax (Payment of 2019 Liability) (JERSEY) Regulations 202- (the Regulations) on the 10th February 2021 to enable a States Assembly debate on the 23rd March 2021 and thereby meet the end of March 2021 deadline for enactment of Regulations.
 9. The explanatory notes to the regulations confirm the proposed framework as follows:
 - *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.

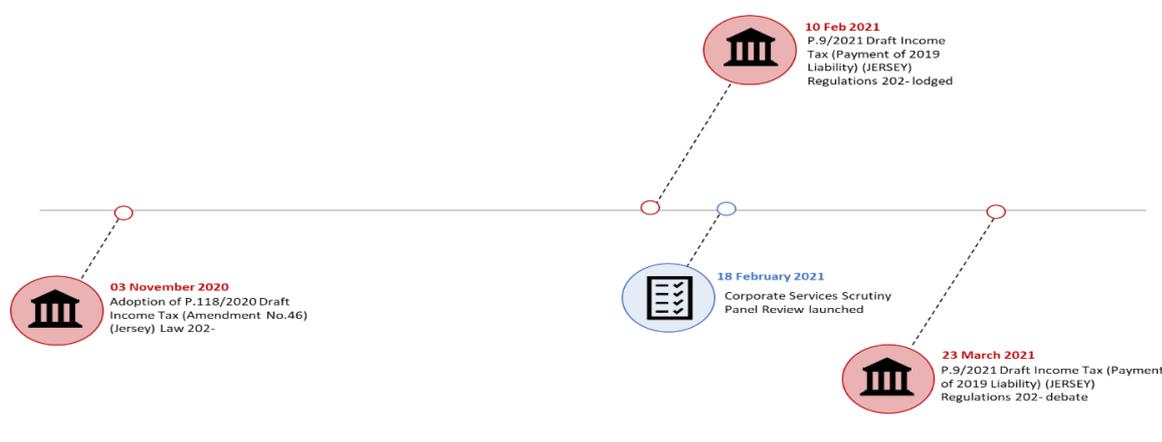
- *Regulation 6* allows a person who has missed the election deadline under Regulation 5 to apply to pay the 2019 liability by deferred payment. The application process is similar to the election process but is subject to the approval of the Comptroller. If a person's application is approved, the person 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.
10. On reviewing the Regulations against the findings and recommendations in its initial review the Corporate Services Scrutiny Panel concluded that it would need to scrutinise the Regulations and prepare a comments paper or report as a follow up to its initial report and to highlight any concerns it had with the proposed regulations. The Corporate Services Scrutiny Panel review was launched on 18th February 2021.
11. The Panel agreed that its appointed adviser (Rebecca Benneyworth) to the Draft Income Tax (Amendment No.46) (Jersey) Law 202- would continue to assist the Panel in its review into the Regulations and the adviser's report containing findings and recommendations is thereby attached to this report .

Report Layout

12. The Panel report firstly provides the background and timeline of Government decisions leading to the lodging of the Regulations. The report then examines the intention of the Regulations and consultation. The next chapter considers the impact on prior year basis taxpayers of changes outlined in the Regulations. The final section of the report considers the consequences across Government due to the proposition.

Figure 1 - Timeline of Income Tax (Payment of 2019 Liability) Regulations



5. Impact for Prior Year Basis Taxpayers

13. The potential impact of the proposed Regulations on various taxpayers was considered by the Panel and its adviser. The Panel received various information in relation to the estimated 2019 total liability from Revenue Jersey upon request which confirmed that the 2019 tax liability would be in the order of £348m and would be broken down as follows:

Figure 2 – Suspended 2019 tax liability broken down into age ranges

Taxpayer Type	Age Range	Count of Taxpayer	Sum of Suspended Liability	Individual Liability %
Individual*	30 years or younger	145	£1M	0.4
	31-40	3,038	£25M	7.4
	41-50	6,380	£79M	23.8
	51-60	8,159	£110M	33.1
	61-70	6,068	£67M	20.0
	71-80	3,591	£33M	9.9
	81-90	1,811	£15M	4.5
	Over 90	427	£3M	0.9
	N/A	67	£0M	0.1
	Individual Total		29,686	£333M
Non-Individual		326	£14M	
Grand Total		30,012	£348M	

* "Individual" refers to human taxpayers so includes married couples

Note: Age at year end 2021

Figure 3 – Suspended 2019 tax liability broken down into marital status

Taxpayer Type	Married	Count of Taxpayer	Sum of Suspended Liability	Individual Liability %
Individual	Married	13,912	£216M	64.9
	Unmarried	15,774	£117M	35.1
	Individual Total	29,686	£333M	100.0
Non-Individual		326	£14M	

Grand Total		30,012	£348M	
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14. The Comptroller of Revenue also confirmed to the Panel that around 150 people had already taken the opportunity to pay the 2019 liability as a lump sum which had raised £1.5m but it was recognised that this could include estates of deceased persons and those who had left the Island.⁴

Pensioners

15. The Panel's adviser, on reviewing Figure 2 – Suspended 2019 liability broken down into age ranges, concluded that 8,863 taxpayers would be at pensionable age. This figure comprised 5,829 taxpayers aged 71 and over and 50% of taxpayers aged 60 – 69 (assuming that the age range is evenly distributed within each age band), thus accounting for 29.86% of the taxpayers with a 2019 liability.

The total amount owed by this group of taxpayers (using the assumption above) is estimated at £70 million or 21.1% of the total liability due by individuals and couples.

16. When considering the impact for current pensioners of the Regulations the Panel's adviser confirmed that:
- (a) a large number of this category of taxpayers are likely to be on fixed incomes with very little scope to bear additional tax liabilities under the default position in *Regulation 3*.
 - (b) the default position in *Regulation 3* is that the 2019 liability is due and payable in seventeen equal instalments from 31 December 2025 to 31 December 2041. But for many in this group of taxpayers this will not be the actual payment pattern as some may not survive until 2041. They would therefore make payment of one seventeenth of their 2019 liability for each of the calendar years during which they remain alive, with the balance being met out of the estate on death.
 - (c) where an application is made in a case of hardship (*Regulation 11*) there could be insufficient assets available in the estate to meet all of the 2019 liability.

17. The Comptroller of Revenue stated in the public hearing with the Panel that:

"We are very satisfied that over a 20-year period, even for pensioners on lower fixed incomes, the proportion of the repayment relative to income is going to be manageable. But the regulations do provide for payment from estate. I think, as ever, the ultimate backstop is always that Jersey's tax law does give Revenue Jersey, the comptroller, and the treasurer in this instance, the flexibility to extend time to pay arrangements wherever it is necessary to do it. I think there are sufficient safeguards in place and I think most pensioners on a fixed income will find that over a 20-year period the annual or monthly payment they choose to make will be a fraction of 1 per cent of total income."

⁴ [Transcript - 2019 Liability Regulations Review Public Hearing with Minister for Treasury and Resources - 26 February 2021, P.4](#)

Key Finding 1

Regulation 11 may not properly take into account all of the personal circumstances of some pensioners with outstanding 2019 liabilities who may not have the ability to settle from their estate.

Recommendation 1

The Minister for Treasury and Resources must ensure that when an application is made in a case of hardship by a pensioner and it is identified that there are insufficient assets available from the estate to meet the 2019 liability that financial projections will acknowledge the amount of the liability to be recovered and the amount which is irrecoverable.

18. Based on the detail supplied in Figure 2 the adviser to the Panel has confirmed that around 3,034 taxpayers are due to retire within the next five years. Although the Regulations provide for hardship for those already over retirement age, the adviser is concerned that the Regulations do not make similar provision for those with a short period to retirement who are facing a substantial liability. Some of these taxpayers will be unable to meet the payments as they fall due as their income will become reliant on a fixed income pension which may not have provision for the 2019 liability. This category will therefore be reliant on negotiating with the Comptroller for a manageable payment plan.

Key Finding 2

Taxpayers who will retire during the repayment term of the 2019 liability could be unable to make payments as they fall due under *Regulation 3*, as they will become reliant on a fixed income pension which may not include provision for the 2019 liability and could result in an inability to pay the remaining balance. This could result in a substantial liability for those due to retire in the next five years. No provision has been made in the Regulations for a final payment from the estate on death in this circumstance and the taxpayer is therefore reliant on negotiations with the Comptroller.

Recommendation 2

The Minister for Treasury and Resources must provide clarity in the Regulations for those taxpayers who elect to pay the 2019 liability by Regulation 3 but will retire during the term of the liability and do not hold a pension with sufficient value to cover the remaining liability and whether they can be considered as a hardship case and enable the remaining payment to be secured from the estate of the taxpayer.

19. In the circumstance where a taxpayer decides to retire early, before normal pensionable age, and elects to pay by deferring the full amount of the liability until pensionable age the Panel's adviser has raised the issue that the taxpayer may have already accessed their pension and may subsequently not be able to provide the source of funds to meet the deferred liability when it falls due. The Comptroller indicated in the public hearing⁵ that information made available by pension providers would enable Revenue Jersey to identify this issue, but the Panel Adviser confirmed there is no requirement for people electing for deferral to provide details of the means by which they intend to pay the liability in the future (although the Comptroller can seek this information on an ad hoc basis). The result of this being to monitor those with a

⁵ [Transcript - 2019 Liability Regulations Review Public Hearing with Minister for Treasury and Resources - 26 February 2021, P.12](#)

deferred liability and their ongoing ability to pay could become burdensome and there is a risk of some taxpayers defaulting on their deferred liability.

Death of a Person with a 2019 liability

20. *Regulation 12* sets out what happens to the 2019 liability in the event of the death of the taxpayer. The Regulation makes the balance of the outstanding 2019 tax liability due and payable at the date of death when the death occurs before the Regulations come into force. In the event of death after the Regulations coming into force, the liability is due and payable 12 months after the Regulations come into force.

Self Employed

21. When considering the impact for self-employed taxpayers the Panel adviser's report confirmed that this category of taxpayer will:
- (a) experience fluctuating income and may find the regular payment option more difficult to manage as proposed in *Regulation 3*, particularly where their business activity is modestly rewarded.
 - (b) not benefit from an occupational pension arrangement as these are more common for employed individuals; thus meaning that electing for deferred payment (*Regulation 5*) may not be an option for these taxpayers.
 - (c) request a payment holiday or multiple payment holidays (*Regulation 4*). Given that payments are due over a 17-year period, it is likely that more than one period of trade would suffer poor results and repeated applications for a payment holiday may proceed which could offer short term relief but may result in increased liabilities in subsequent years which may become unmanageable.
 - (d) be susceptible to a high 2019 liability but then suffer a trading reversal from which it is difficult to recover due to the impact of COVID-19.

Key Finding 3

It is difficult at this stage to predict the impact of the Regulations on self-employed taxpayers, but some are likely to be detrimentally affected and unable to settle the 2019 liability.

Recommendation 3

The Comptroller for Revenue must apply powers considerably to self-employed taxpayers and clarify whether fluctuating rates of yearly payments aligned to income could be made by this category of taxpayer who elect to pay the 2019 liability by Regulations 3.

Families with Children

22. Figure 2 – suspended 2019 tax liability broken down into age ranges confirms that families with children cover the age range from the youngest people up to those aged 50 – allowing for children who are attending university. This is a total of 9,563 persons and couples, representing 32.2% of the population of people with a 2019 liability.

The total amount of the 2019 liability owed by this group of people is £104 million, which is 31.2% of the total estimated 2019 liability due by individuals and couples.

The default position in the absence of an election under Regulation 3 is by instalments for families with children. In the Public Hearing the Comptroller indicated⁶ to the Panel that the option to elect for deferred payment was aimed specifically at this group of people. The average amounts due by persons in this group are shown in Table 3 above.

“We were particularly keen to help younger P.Y.B. taxpayers still homemaking and family growing who might yet have to face perhaps school fees or university fees. So they have been given the possibility to elect to pay the liability at the point they retire.”

23. The Panel’s adviser when considering the impact on families with children identified the following factors:

- a) a number of families with children will have high levels of outgoings and will elect to defer payment as per Regulation , meaning that the liability will be due 12 months after they reach pensionable age – which for this cohort will be age 67, in the light of the increasing pensionable age currently being implemented.
- b) where a taxpayer has commenced payment by instalments (Regulation 3) and suffers financial difficulty *Regulation 4* provides for an automatic right to a single 12-month payment holiday. This would absolve the person from one annual instalment payment and spread the remainder of the person’s 2019 liability over the remaining period up to 2041. There is also provision for further applications for 12-month payment holidays (Regulation 4(2)(b)), which may be approved by the Comptroller. There is no requirement for the applicant to demonstrate hardship in the case of a second or subsequent application for a payment holiday.
- c) The payment holiday Regulations (Regulations 4 (2) (b)) do not specify what factors the Comptroller should take into account in deciding whether to approve a second or subsequent application for a payment holiday. In order to provide transparency, the exercise of the Comptroller’s powers under these Regulations should be disclosed so that affected persons have a clear understanding of how decisions are arrived at. While the Comptroller has highlighted that it is normal practice to do so, the Panel adviser considers such disclosure of the rationale should be mandatory.
- d) Given the age range of this group, it is important for Government projections that the significant potential delay in collecting the 2019 liability is recognised. Using the assumptions relied on above regarding the distribution of age ranges within each group, around 7,650 of this group will reach pensionable age after 31 December 2041, thus deferring the collection of the 2019 liability significantly. A person aged 30 on 31 December 2021 will not reach pensionable age until 2058, and their 2019 liability would be due in 2059 if they elect for deferral. A maximum of £81.3 million (24.4% of the total liability) could be due after 2041 if all of these taxpayers were to elect for deferred payment.
- e) When a person has elected, or applied for and been granted permission, to pay the 2019 liability 12 months after reaching pensionable age, nothing in the Regulations seeks to remind them of their position and the fact that a potentially large sum of tax will become due and payable at a much later date. The Regulations (at Regulation 7(3)) do permit the Comptroller to seek evidence at any time that a person will have sufficient means to meet the deferred payment when

⁶ [Transcript - 2019 Liability Regulations Review Public Hearing with Minister for Treasury and Resources - 26 February 2021, P.10](#)

- it falls due, but the onus is on the individual to review their financial commitment on an ongoing basis.
- f) Given the very long period of deferral, there is a risk that people who have made an election to defer the liability (or applied for and been granted deferral) may lose sight of the need to build up funds to pay the liability at a later date. This presents a risk to public finances, and to loss of good faith by people who have undergone hardship in order to make the payments by annual instalments.
 - g) Where a person liable to pay their 2019 liability 12 months after they reach pensionable age suffers a change of circumstances which means that they will no longer be able to pay the liability when it falls due, Regulation 7(2) requires them to notify the Comptroller of that fact as soon as is practicable. There is no sanction prescribed for failure to do so.
 - h) Regulation 7(5) does not, however, provide for the situation where a person has made some payments towards their 2019 liability and then applies (and is granted permission) to move the remainder of the liability to deferred payment. If they subsequently find that they will not be able to pay the deferred liability at the due date, instalment payments may be reinstated under Regulations 7(5) (para. 2.30). Making the '2019 liability' payable in instalments would mean that the person would be required to overpay the liability as it fails to take into account the payments already made.
 - i) In the event that a person who will reach pensionable age significantly after 31 December 2041 suffers a change in circumstances after that date, Regulation 7(5) as it stands does not provide for interim collection of any of the 2019 outstanding liability. The natural consequence of the Regulations as drafted is that the liability cannot become due and payable until the deferral date, after which enforcement can commence after a three-year wait (Regulation 15).
 - j) Where an additional 2020 liability has arisen through a pay rise or similar event, it is expected that the person will have adequate funds with which to meet the extra liability. However, where the increased income arising as a result of other circumstances such as returning from a career break or parental leave it is described that Revenue Jersey will adopt a sympathetic approach where a taxpayer is able to demonstrate financial hardship. This may involve extending the time to pay the additional 2020 liability over a number of years.

Key Finding 4

The Regulations provide for the exercise of the Comptroller's discretion in allowing a second or subsequent payment holiday for the 2019 liability. The matters which would be taken into account are not prescribed by the Regulations, so affected taxpayers are not in a position to understand whether they are likely to benefit from these arrangements before applying, or to challenge a decision against them.

Key Finding 5

There is no mechanism presently set out to remind taxpayers who have elected for deferred payment of the need to build up funds to make payment when it falls due for the 2019 liability. This represents a risk to the collection of the 2019 liabilities at a future date.

Key Finding 6

Regulation 7(5) does not recognise that a taxpayer unable to pay the 2019 liability twelve months after reaching pensionable age may already have made some payments towards the liability.

Key Finding 7

The Regulations do not currently provide a mechanism for collection of the 2019 liability if deferred beyond 31 December 2041, if there is doubt concerning the taxpayer's ability to pay the 2019 liability as it falls due.

Recommendation 4

The Comptroller of Revenue must provide financial projections which reflect payment holidays taken by taxpayers in the accounting records of the 2019 liability.

Recommendation 5

The Comptroller for Revenue must ensure that the basis of decision-making on whether or not to approve a second or subsequent payment holiday is a matter of public record.

Recommendation 6

The Comptroller for Revenue must ensure that a form of reminder exists for taxpayers who have elected for deferred payment on a periodical basis, which will encourage taxpayers to review their financial position and ensure that they are building up funds to pay their 2019 liability when it falls due.

Recommendation 7

The States Assembly should agree the amendment to the Regulations lodged by the Panel which recognises payments already made on account of the 2019 liability to determine the amount due and payable under Regulation 7 (5) – payment by instalments of the liability previously deferred.

Recommendation 8

The States Assembly should agree the amendment to the Regulations lodged by the Panel to provide for a review of the collection of the 2019 liabilities to be carried out after 10 years and a report be presented to the States Assembly. The outcome of the report being to consider whether further amendments to the Regulations should be considered, particularly in connection with liabilities deferred beyond 2041.

Individual Borrowing

24. The Panel's adviser reviewed the individual borrowing concerns and made the following observations:

- (a) Mortgage lenders have not given a specific answer to questions about how the repayment terms for the 2019 liability will affect lending decisions in the future. Some lenders have confirmed that their normal rules will apply in future to lending decisions.
- (b) The characterisation of the 2019 liability as an amount due at some future date, rather than an amount of tax debt presently outstanding means that the full amount

is unlikely to be taken into account as a debt by lenders when considering approval of a mortgage application. The 2019 liability is only classified as a debt when triggered by the Regulations, which, in the case of those paying by instalments, is an amount of one-seventeenth of the total 2019 liability each year from 2025 to 2041.

- (c) Where lenders follow internationally accepted rules on affordability developed after the 2008 sub-prime mortgage collapse, this involves taking into account not only the gross income of the borrower(s) but also the regular outgoings from the household in an “affordability test”. In the UK this results in many applicants being refused a mortgage even where the repayments are significantly lower than the rental payments they are currently making, as lenders are required to take very risk averse decisions based on the affordability test.

Assuming that broadly the same basis applies to lending decisions in Jersey it is likely that these decisions will be affected by the proposals for repayment of the 2019 liability where a potential borrower has not elected for deferred payment. It is possible that once the 2019 liabilities are known and the payment arrangements finalised, lenders will take these into account in their affordability tests even before repayments start. This will inevitably result in lower mortgage offers than can be made without this additional debt and may lead to families being unable to secure a first step on the housing ladder.

- (d) It is possible that the lower mortgage availability will affect the housing market in Jersey, producing a downward price adjustment. However, it is likely that, given the 20-year period allowed for making payments, any effect would be marginal.
- (e) It is also likely that persons seeking a mortgage or anticipating seeking a mortgage may elect for deferred payment, in order to remove consideration of the annual repayments from the affordability test. This will have an impact on the financial projections regarding collection of the 2019 total liability.

25. The Panel questioned the Comptroller on the definition of a tax liability verses a tax debt in a public hearing on the 26th February 2021 and was advised (in relation to the 2019 liability):

“It is not technically a legal debt and the way the draft regulations have been prepared it is very careful to specify when parts of that suspended amount become a legal tax debt.”⁷

The Panel adviser has confirmed that it is clear that the Regulations move the 2019 liability back into the classification of a tax debt either over time on an annual basis or in the event of one or more specific events occurring such as an individual leaving Jersey, at which time the full liability would crystallise. The adviser remains concerned that there is the possibility that people will not be able to secure a mortgage in the event that some of the debt has crystallised and remains unpaid.

26. The following contribution was provided by a respondent who is a mortgage broker to the request for comments by the Panel in February of 2021 on the Draft Regulations:⁸

⁷ [Transcript - 2019 Liability Regulations Review Public Hearing with Minister for Treasury and Resources - 26 February 2021, P.3](#)

⁸ [Call for Evidence - Income Tax \(Payment of 2019 Liability\) Regulations Review - 23 February 2021](#)

“The more worrying aspect of the new Regulations is the long-term repayment plan extending up to a max of 20 years that will be made available if required. As a regularly occurring monthly outgoing, the cost of servicing this will have to be taken into account by mortgage lenders and will have a detrimental impact on the maximum that they will be able to offer to a borrower”⁹

Divorcing couples and civil partners

27. The Panel adviser confirmed that the Regulations provide for repayment of the 2019 liability over an extended period of time but should consider the impact on married couples and civil partners whose relationship breaks down in relation to the repayment of the 2019 liability.
28. On the introduction of Independent taxation it is proposed that historic liabilities will not be affected by the changes, so the 2019 liability will remain with the husband or spouse A (the older or elected partner) until settled.
29. Figure 3 provides an analysis of the total 2019 liability between single and married persons. This shows that among individual taxpayers there are 13,912 married couple taxpayers with a 2019 liability (46.9% of the total number of individual taxpayers). In aggregate the 2019 liability owed by married taxpayers is £216 million, or 65% of the total owed by individuals. So married couples and civil partners owe a disproportionate amount of the total 2019 liability. The Panel's adviser has confirmed that the average liability for a married couple is therefore £15,526.
30. The Panel's adviser confirms that:
 - (a) the proposed Regulations make no provision to recognise the impact of divorce on payment of the 2019 liability. This means that the husband, or Spouse A would remain liable for the payment of the 2019 liability after the divorce. The financial settlement on divorce would therefore need to recognise the requirement to make payment of the 2019 liability, either by instalment payments or by deferring the liability until 12 months after reaching pensionable age.
 - (b) Income Tax law in Jersey does make provision for the Comptroller to resolve disputes of this nature and disputes which are referred to the Comptroller are rare. However, the new 2019 liability brings additional problems.
 - (c) In the context of a divorcing couple, the 2019 liability is likely to represent the most significant financial issue for them after the resolution of a house owned by the couple (if any), and the lack of any provision in the Regulations to assist in this area is regrettable.
 - (d) The Regulations do make provision for the allocation of the 2019 liability in the case of a partnership. In this case, the 2019 liability would be due by the partnership itself, but in recognition of change in the constitution of the partnership, and after representations by accountants and other professional advisers, Regulation 14 makes provision for the liability to be divided between the partners of the firm in 2019 and to be regarded as part of the individual partner's personal 2019 liability.

⁹ [Submission - Member of the public - Income Tax \(Payment of 2019 Liability\) Regulations Review - 08 March 2021](#)

- (e) The likelihood that couples will separate and divorce during the repayment period is high, particularly in view of the high number of married taxpayers who have a 2019 liability, and the length of time that will pass before these liabilities are met in full. In particular, it is widely recognised that financial pressures in a marriage can lead to the breakdown in the relationship. Those financial pressures are inevitably more likely for many couples with a 2019 liability.
 - (f) Given the significant amount of total 2019 liability due by married couples compared to the very modest amount owed by partnerships) the fact that proposed Regulations do not identify this as a serious issue needing specific measures will mean that couples whose relationship is in difficulty will have the added worry and expense of resolving the 2019 liability as part of the divorce settlement.
 - (g) There is a risk that in some cases there may be insufficient joint assets to ensure an equitable division of marital assets after taking into account the 2019 liability, which means that an ongoing payment between the couple may be necessary to cover the 2019 liability. This outcome would prolong the financial links between the couple for an extended period of time, which is an unsatisfactory outcome.
 - (h) Failure to address this point may adversely affect the future relationship of a divorcing couple and any children of the marriage or civil partnership. It may lead to protracted divorce disputes and significant additional legal costs incurred to resolve this issue between the couple. Ultimately, for some couples, it may prove impossible to resolve equitably given the assets available.
31. An experienced divorce advocate in Jersey informed to the Panel adviser that an outstanding tax liability is an area where the Courts in Jersey are not able to intervene on divorce, and if the couple cannot reach an amicable agreement about how an outstanding liability is to be recognised as part of the financial settlement, the only recourse is to the Comptroller.

The divorce advocate highlighted that resolving the tax issue where a single year liability is outstanding, particularly where one of the couple is self-employed, is a complex matter. The view of the advocate is that a significant liability to be settled, potentially a long time after the divorce is finalised, will add considerably to the time, worry and disagreement during the divorce process, and the lack of a satisfactory solution to this is a real problem. It is self-evident that this will also increase the costs borne by a couple seeking to divorce or dissolve their civil partnership.

Amending the law to allow the Courts to resolve the issue of a tax liability in relation to a divorcing couple was highlighted as a solution, as the Courts would be in full possession of all of the relevant information about the couple's income and assets, and thus could arrive at an equitable solution.

32. The Panel received the following comment from a respondent to the request for views on the Draft Regulations:

"If the relationship comes to an end and spouse B had the majority of income in 2019, this would put spouse A in a difficult position. It would be unfair if he/she had to continue paying the outstanding instalments in full. The advice given on the States' website is that from the date of a divorce the two parties will be assessed separately

*but in respect of earlier assessments 'you may still have tax to pay up to the date of separation.'*¹⁰

33. The Comptroller of Revenue confirmed in the public hearing that:

*"In the unfortunate event that that couple do divorce they would sit down with their lawyers and look at their assets and liabilities and reach an arrangement on them. As I say, in extreme circumstances, if they cannot reach an arrangement the law allows me to help allocate the responsibilities appropriately and proportionately."*¹¹

He also then went onto clarify when asked to align this to independent taxation that:

*"if the couple had a tax debt from 2022 or 2023 that would still, in law, belong to the husband and we would not propose to do anything about that because that would involve retrospective legislation. What would happen, as happens now perfectly easily and well, is that when people divorce they settle these things between themselves and the taxman only intervenes in extremis. If, for example, somebody entered independent taxation in 2025 and they were a P.Y.B. taxpayer and they had a 2024 debt, and the 2019 frozen liability, those 2 things will be treated separately; the 2019 liability would be treated according to these regulations and the 2020-odd debt would be treated according to existing law."*¹²

Key Finding 8

There is currently no satisfactory mechanism for dealing with a disputed tax liability between a couple in the event of divorce or dissolution of a civil partnership. The Regulations leave the husband or Spouse A liable for the 2019 liability. This poses a risk when couples divorce and may exacerbate the practical and financial difficulties the couple are facing. This could adversely affect the mental health of individuals and may also impact negatively on children of the relationship.

Recommendation 9

The Minister for Treasury and Resources should consider amending the income tax law to provide that in the event of divorce or dissolution of a civil partnership the Courts may rule on the 2019 tax liability of the couple rather than the Comptroller of Revenue.

Independent taxation in 2022

34. On reviewing the layout of independent taxation in 2022 as proposed by the Minister for Treasury and Resources the adviser to the Panel made the following observations in relation to the 2019 liability:

- (a) The introduction of independent taxation of married couples and civil partners is planned to commence from 2022. The indications are that this will be a phased approach and is unlikely to affect taxpayers with a 2019 liability immediately.

¹⁰ [Submission - Member of the public re Income Tax \(Payment of 2019 Liability\) Regulations Review - 26 February 2021](#)

¹¹ [Transcript - 2019 Liability Regulations Review Public Hearing with Minister for Treasury and Resources - 26 February 2021, P.7](#)

¹² [Transcript - 2019 Liability Regulations Review Public Hearing with Minister for Treasury and Resources - 26 February 2021, P.8](#)

- (b) The arrangements are intended to be that on the introduction of independent taxation, there will be no changes to historic tax liabilities and Spouse A will still remain liable for the 2019 liability arising prior to the implementation of independent taxation.
- (c) However, in relation to the 2019 liability, this represents a potentially substantial tax liability which relates to the couple prior to independent taxation, and this liability will persist for potentially many years to come. Where a person has been paying the 2019 liability by annual instalments, by the time the couple are subject to independent taxation the amount may be less significant to them. However, where the husband (or spouse A) has deferred the liability for payment 12 months after they reach pensionable age, the 2019 liability is likely to represent a significant future liability.
- (d) To the extent that independent taxation allows a couple to become more financially independent of each other and in particular allows the wife (or spouse B) to have more financial autonomy, the existence of a 2019 liability prevents the couple from truly becoming financial autonomous until the 2019 liability has been settled in full.

Other taxation increases

35. The Panel's adviser highlighted in her report that:

- a) The payment of the 2019 liability needs to be considered against a backdrop of other proposed increases in taxation. While extending the payment term to 2041 is a welcome development to protect people with 2019 liabilities from financial difficulty, the repayments made under the instalment payment arrangements still represent an increase in the tax payments made year by year by affected taxpayers. Their experience of the tax burden will be that it has increased, without any increases in headline rates.
- b) It is inevitable that even with the extended payment terms and the opportunity to take a payment holiday, some taxpayers will find this impacts significantly on their lifestyle, and there will be consequences for the wider Jersey economy and the ability of the Government to raise taxes in the future. This of course needs to be balanced by the fact that this debt is an amount properly due by affected individuals, and in fairness to those who have been taxed on a current year basis, must be collected to provide funds for public services.
- c) The fact that some Jersey taxpayers will perceive that tax has increased as a result of the requirement to pay the 2019 liability needs to be borne in mind when considering other tax raising proposals in the future. Likely developments include:
 - a) A proposal to increase the rate of Long-Term Care (LTC) payments, which will add additional tax burdens for all taxpayers.
 - b) The removal of mortgage interest relief by the year of assessment 2026, agreed by the States Assembly [in December 2015], which will undoubtedly increase the tax burden on many homeowners.

6. Use of Public Finances

Fiscal Soundness

36. The Panel's adviser acknowledged in her report that:

- (a) The nature of the proposals for the repayment of the 2019 liability means that planning for the revenue stream within Government will be virtually impossible until after 30 September 2024, when many people with a 2019 liability will make a decision whether to meet the liability by annual instalments over the period 2025 to 2041, or to defer the liability until 12 months after they reach pensionable age. To be unable to budget for such a significant cash inflow makes managing Government finances and expenditure planning very difficult indeed.
- (b) Once 30 September 2024 has passed, projections on the basis of available data will be possible, but will be subject to revision when people change their method of payment as provided for by Regulations 6 and 7. Although there is a significant number of affected taxpayers, it is likely that the number of people making changes to their plans for payment of the liability will balance each other out during the period for repayment.
- (c) Annual payment plan indicates that the 2019 liability will be collected by 31 December 2041, the number of younger taxpayers electing for deferred payment will potentially significantly delay the collection of the 2019 liability. Table 1 shows that 7,649 taxpayers will reach pensionable age after 2041, and that the 2019 liability relating to this population is £81.3 million (24% of the total amount due by individuals). These figures assume that the age of taxpayers is evenly distributed through the age range and takes an average across the age range for the amount of the 2019 liability due by any age group.
- (d) Given the difficulty in budgeting for collection of the 2019 liability it is important that those responsible for managing Government finances prepare and update projections based on anticipated collection dates on a regular basis. Reports of actual collection against projected amounts on both a regular and timely basis will then allow proper oversight of the collection activity and the revision of budgets to reflect actual cash inflows and future expected revenue receipts.

Protecting Public Revenue

37. The Comptroller of Revenue confirmed the Panel adviser's observations in terms of forecasting by stating in the public hearing that:

"we cannot forecast with any absolute degree of certainty until people have made their elections. That will not be happening until the end of 2024. Clearly, we know there is somewhere between £340 million, £350 million to collect. We know that if people pay that monthly over 20 years it will work out at a certain sum. We know that if 50 per cent choose to pay at the time they retire it will be a different sum. We can do some

scenario planning around that but in reality we cannot forecast it with any degree of accuracy until we know what people have elected to do.”¹³

38. The Draft Regulations have been structured to provide manageable payment alternatives for people who have a 2019 liability. However, there is a risk that the generosity of the arrangements will be abused. Where a person has elected to defer the 2019 liability until 12 months after they reach pensionable age, there is a risk that they will deliberately deplete their available assets before that date and then fail to pay the liability as it falls due. For example, in the case of many of the people affected by this liability their pensionable age will be 67. Current tax law in relation to private pension arrangements allows an individual to draw a tax free lump sum from the pension arrangement at age 55, which the individual could spend during the following 10 to 12 years, leaving no assets with which to pay the 2019 liability as it falls due.
39. During the public hearing as part of the Panel’s review of the Regulations the Comptroller indicated that this area would be dealt with by a review on a risk basis of people’s ability to pay the 2019 liability as it falls due. The Comptroller has a general power to request evidence that the person will have sufficient means to pay the 2019 liability as it falls due (Regulation 7(3)). It is right that the decision as to how often and when the Comptroller seeks such evidence rests with Revenue Jersey, but given the substantial sums involved it might be appropriate that some Ministerial oversight is exercised over the compliance activity undertaken in relation to deferred 2019 liabilities.
40. Although Regulation 7(2) requires a person who has a deferred 2019 liability to inform the Comptroller if their circumstances change such that they will no longer have sufficient means to pay the liability on the due date, there is no sanction prescribed for failure to do so. In the circumstances described above at paragraph 38 it is possible that the fact that the liability cannot be met will not become apparent until the due date is reached. There are then limited options available to collect the debt in a timely manner, and indeed this may compromise collection of all or part of the liability.
41. Taxpayers who choose to pay the 2019 liability by regular instalments can rightly expect the tax authority to ensure that those who have deferred the liability will pay it when it falls due. If they do not believe that adequate measures are in place to ensure full payment of the liability, they may lose trust in the system, and may believe that they have been unfairly treated. It is therefore essential that there is a robust process of compliance activity in regard to deferred liabilities, not only for the protection of public revenue but also to retain the trust of former PYB taxpayers making payment of their liability.
42. One respondent to the public request for comment on the Draft Regulations expressed concern about the generous nature of the provisions and the potential for some taxpayers to abuse this:

“The Government’s proposal to mitigate the difficulties that may be faced by certain taxpayers in settling their 2019 tax liability arising from the above is to allow taxpayers to pay over 20 years or after retirement. I fully support giving more time to certain taxpayers who may be stretched financially for various genuine financial reasons however there needs to be an equitable system put in place to ensure all taxpayers are treated fairly otherwise the island is providing an interest free loan to

¹³ [Transcript - 2019 Liability Regulations Review Public Hearing with Minister for Treasury and Resources - 26 February 2021, P.4](#)

those taxpayers who may deliberately delay payment unnecessarily . I believe the option of giving tax payers such a long period of 20 years to settle this liability which has arisen from income that they have already received is excessive, in particular because there is no additional charge imposed on late settlement of the liability or any incentive for taxpayers to settle this within a normal or more reasonable timeframe.

I am fully supportive of allowing more time generally to allow a person to settle the 2019 tax liability and in particular to certain taxpayers who may be stretched for genuine financial reasons (which needs to be explained). I believe the current proposals to allow 20 years or more are excessive , inequitable to those taxpayers who settle the liability on a “normal basis” and will be very costly to administer and inevitably result in a loss of some of this tax liability.”¹⁴

43. Where a younger person has chosen to defer the 2019 liability, and subsequently discovers that their assets will not be sufficient to meet the liability when it falls due, the Regulations provide that the Comptroller may require the person to pay the 2019 liability by annual instalments over the period up to 2041. However, for taxpayers currently under 47 years of age, this may arise after 31 December 2041. The Regulations make no provision to deal with this situation, and the liability cannot therefore be collected until the person defaults on payment when it falls due. Key finding 4 and Recommendation 4 highlight this issue and recommend that the Regulations are reviewed after a period of 10 years to identify any amendments that may be required based on actual experience of collection of the 2019 liability.

Key Finding 9

Budgeting for the revenue stream arising from the collection of the 2019 tax liability will be a challenging task for Treasury, and the amounts involved are significant. This could potentially add risk to the management of Government expenditure over an extended period.

Key Finding 10

Deferral by taxpayers of the 2019 tax liabilities under the Regulations presents a risk to public revenue and potential for unfair application of the Regulations between taxpayers.

Recommendation 10

The Minister for Treasury and Resources must ensure that a formal system of reporting and review in relation to the 2019 tax liability and the collection of the revenue in a timely and efficient manner is established and adequately reflected in the Annual Report and Accounts.

Manpower and Systems

44. The Report on the Focus Groups included a clear indication that many respondents wanted a simple payment system which could be self-managed and should primarily be digitally based.
45. The Comptroller of Revenue in the Panel's public hearing confirmed:

¹⁴ [Submission - Member of the public re Income Tax \(Payment of 2019 Liability\) Regulations Review - 07 March 2021](#)

“One of the important messages we will be giving to the public is that we will only really be providing information on the choices early in 2022; once the project has developed, the software and the systems to manage the change. The intention is we will really ask people to hold fire until thinking about this until 2022.”¹⁵

46. The Panel’s adviser agreed that the opportunity to build a digital system for managing the 2019 liability would:

- (a) relieve Revenue Jersey of some of the administrative time and effort in managing the liability.
- (b) provide many people with an easy way of reviewing their outstanding liability and give them a better understanding of how much is due and when.
allow (and even encourage) taxpayers to engage digitally with their 2019 liability would also promote digital engagement with tax generally.
- (c) support the development of online filing and other digital engagement that Revenue Jersey might seek to implement.

47. The Panel adviser confirmed that to develop the functionality to achieve this will require careful planning and customer research, and potentially significant expense, but this would be a key investment in reducing administrative effort to manage the liability.

48. One of the written responses received by the Panel from the call for evidence to the draft Regulations expressed concern about the administrative issues in managing the liability for Revenue Jersey:

“One other aspect of these proposals is that the administrative costs of following up/ tracking this long term settlement (ie with people moving/ leaving the island etc) will be absolutely huge and will inevitably result in a substantial amount of the tax due being lost”

Another respondent to the request for comment replied as follows:

“To ensure there are no misunderstandings or surprises the Comptroller should issue, at least annually, a statement showing the total paid, the total outstanding and the amount of equal annual payments needed to clear the liability by 31 December 2041. Appropriate computer facilities will be required.”¹⁶

49. The Panel adviser highlights in her report that the taxpayers’ account could provide the facility to make payment, or to request contact from Revenue Jersey regarding payment holidays and other aspects of the Regulations. This would reduce the volume of telephone contact and provide a more manageable way of dealing with the administration of the collection of the 2019 liability.

50. The report also highlights that plans to manage the administration of the collection of the 2019 liability and in particular the option of the use of digital tools by taxpayers to self-manage the liability will be a challenge for some taxpayers who are not digitally confident. The development of processes will therefore need to bear in mind that non digital methods of engagement will need to be developed (and adequately funded) alongside digital delivery.

¹⁵ [Transcript - 2019 Liability Regulations Review Public Hearing with Minister for Treasury and Resources - 26 February 2021, P.4](#)

¹⁶ [Submission - Member of the public re Income Tax \(Payment of 2019 Liability\) Regulations Review - 07 March 2021](#)

51. The Comptroller of Revenue stated in the Public Hearing that:

“We are setting up a project team as we speak. That will seek to deliver the scheme and the necessary online services related to it so that people can, ideally wherever possible, make their elections online and make payments in the easiest way or make their election to defer until retirement and so on.”¹⁷

Key Finding 11

The focus group feedback highlighted that a number of taxpayers with a 2019 liability would like the opportunity to see the outstanding liability and manage the basic administration of their liability themselves, ideally through a digital platform.

Key Finding 12

It is likely that there will be a number of taxpayers who are not able to confidently engage through a digital platform and will require additional assistance to manage their 2019 liability.

Key Finding 13

Collection by the Comptroller of Revenue of the 2019 liability from taxpayers in advance of new computer systems being developed and implemented by Revenue Jersey needs to be carefully managed to ensure it is correctly assigned to the liability.

Recommendation 11

The Minister for Treasury and Resources must ensure that the proposals for administering collection of the 2019 liability includes the development of a digital facility for taxpayers to manage the administration themselves and that this will include periodical notifications of the outstanding 2019 liability to taxpayers and confirm payments made towards a 2019 liability. The digital facility should be operational from when election of the 2019 liability is required.

Administration and Process

52. There are currently no provisions in force to charge interest on tax due but unpaid, but should such provisions be commenced then interest would be charged on the 2019 liability from date of death until the estate makes payment. This will encourage speedy resolution of the estate in the event of the death of a person with a remaining 2019 liability.
53. Even with the provision of a self-managed facility, the resource implications for Revenue Jersey of managing collection of the 2019 liability are likely to be significant. The Report accompanying the Draft Regulations sets out very broad estimates of the likely costs of implementing the changes. In summary, the planned expenditure on implementation is of the order of £400,000 to £600,000 in set up costs and ongoing costs of £50,000 to £60,000. The Report notes that this expenditure is currently not provided for and will need to be included in Government plans after 2021.
54. The Panel adviser was unable to review or comment on preparations for development of systems (including computer systems) to administer the collection of the 2019 liability as plans are not sufficiently advanced to allow such a review. There is a long lead-in time before routine collection commences, but in the interim some taxpayers

¹⁷ [Transcript - 2019 Liability Regulations Review Public Hearing with Minister for Treasury and Resources - 26 February 2021, P.4](#)

may wish to make payments towards their liability. Given that the focus is likely to be on building a long term solution for collection, the administration of this interim period before new systems are developed is an area of risk, as it is unlikely that appropriate systems and controls will be in place. .

55. The estimate of one additional member of staff in the medium term (steady state) to operate the collection of the 2019 liability may not be sufficient. There are a number of strands needed to ensure the smooth collection of the liability and related compliance activity. These might include:
- (a) dealing with requests to move from annual payment to deferred liability and consideration and approval of such requests.
 - (b) agreeing future payment plans with taxpayers who have discovered that they will not have sufficient assets to pay a deferred 2019 liability.
 - (c) dealing with taxpayers who cannot meet the annual payments as they fall due and negotiating appropriate payment arrangements.
 - (d) processing the application and outcome of first payment holidays for taxpayers.
 - (e) considering applications for second and subsequent payment holidays and either approving or refusing these; additional time spent rescheduling payment arrangements to reflect second or subsequent payment holidays agreed.
 - (f) dealing with enforcement of the full debt for those taxpayers who have not made payment for a three-year period after some or all of the 2019 liability falls due.
 - (g) compliance work on deferred liabilities to ensure that sufficient assets are available to pay the liability when it falls due.
 - (h) providing data and reports to Government on the collection of 2019 liabilities and the amount and due dates of granted deferrals (to enable forecasting).
 - (i) negotiating with taxpayers leaving Jersey in respect of payment of their 2019 liability.
 - (j) supporting taxpayers unable to engage digitally with understanding their remaining 2019 liability and when payments are due.
 - (k) processing / recording payment(s) made against the 2019 liability where this cannot be automated.
 - (l) dealing with collection from the estate of a deceased taxpayer.
 - (m) compliance and collection activity in relation to non-resident taxpayers.
 - (n) dealing with appeals against the various decisions provided for in the Regulations.
 - (o) providing paper statements of the outstanding 2019 liability to those taxpayers who choose not to receive that information digitally.

Key Finding 14

The current estimate of one additional member of staff by Revenue Jersey to complete the administration may be inadequate. The Panel is concerned that the implementation of the Regulations will put additional pressure on the Revenue Jersey Team.

Recommendation 12

The Comptroller of Revenue to establish and maintain internal controls and reporting mechanisms to ensure management and oversight of the 2019 liability and adequate resourcing to achieve delivery.

Recommendation 13

The Minister for Treasury and Resources should reconsider the manpower and financial implications if these regulations are adopted to ensure propriety and regularity responsibilities under the Public Finances (Jersey) Law 2019 have been fulfilled adequately.

7. Conclusion

56. The proposals in the draft Regulations for the collection of the deferred 2019 liability have been significantly revised since the original proposals were developed in October 2020.
57. The changes from the original proposals make payment of the 2019 liability more manageable for all taxpayers with a 2019 liability. However, the consequence of this is that collection of the liability has been extended over a very long period which will have a significant impact on Government projections of revenue inflows and management of Government expenditure. Appropriate risk management processes will be essential.
58. In particular, the provision for the liability to be collected on death in cases of hardship where taxpayers who have attained pension age before the Regulations commence is a sensible recognition of the precarious financial position that some taxpayers may experience.
59. Taken as a whole, the proposals address many of the concerns expressed by taxpayers in the focus groups examining the change to the PYB tax system. Although it was originally considered that an affordability test be implemented, the Regulations provide sufficient scope for flexibility over collection to obviate the need for such a test – which may have been considered intrusive and would certainly be resource intensive.
60. One of the key failings in the Regulations – and probably the most important one – is the lack of recognition that the 2019 liability imposes significant extra pressure and worry on couples whose relationship has already broken down to the point that they are seeking divorce or dissolution of their civil partnership. Although in practice this will prove a difficult issue to resolve, the failure to even consider the issue is regrettable.
61. It is likely that those taxpayers with a 2019 liability in payment over the 20-year period allowed will see reduced availability of mortgage funding as a result of the recognition of their additional regular outgoings by potential lenders.
62. With such generous provision for payment of the 2019 liability over a considerable period of time, this inevitably increases the risk that some of the amount due will prove to be irrecoverable. Careful design and application of compliance processes and sufficient oversight is essential to minimise this risk.
63. The appetite of taxpayers to self-manage their liability and payments through the use of digital technology is encouraging and should provide the impetus for Revenue Jersey to make the most of this opportunity to limit the internal administration costs through the development of an appropriate digital platform.
64. The Panel's adviser did not review the project plan for implementation of the processes to manage collection of the 2019 as this has not yet been developed.
65. The resource needs of Revenue Jersey to manage collection and compliance work in relation to the 2019 liability will need to be reviewed as plans develop to ensure that adequate resources are available.

8. Appendix

Corporate Services Scrutiny Panel Members

Senator Kristina Moore – Chair



Deputy Steve Ahier – Vice Chair



Senator Steve Pallett



Senator Tracey Vallois



Connétable Richard Vibert



Adviser Overview

Adviser Engagement Brief

Following a full tender process, the Panel engaged Rebecca Benneyworth to provide expert technical assistance during the review.

The adviser was engaged to:

- act as a sounding board on the PYB taxation reform proposal relevant to the Panel's work.
- expose the Panel to the full range of views available relating to the Panels' work.
- study the evidence gathered by the Panel and advise on quality, limitations and appropriate use of research carried out by, or on behalf of the Panel.
- brief the Panel in advance of the Public Hearings.
- advise on specific issues and problems, as requested, by the Panel relating to its work.
- provide guidance to the Panel on the preparation of its report and any recommendations arising from the review.

Adviser Bio - Rebecca Benneyworth – MBE BSc FCA

Qualified accountant after studying Mathematics at university. Main businesses (for the last 30 years) is as a lecturer, writer and consultant on a variety of taxes. Lecturing extensively throughout the UK, to accountants, business people and also to HMRC and HM Treasury. Has own accountancy practice based in Gloucestershire, with a variety of small business and personal tax clients. During the last two years this has become a 100% digital practice. This direct practical exposure to businesses and taxpayers is essential to my variety of roles as it gives me a clear understanding of the needs of taxpayers and the impact of the tax system on them.

Served as Chair of the Tax Faculty of the ICAEW, and now serve on the Tax Faculty Board. ICAEW council member for the West of England, sitting on the ICAEW Technical Strategy Board for 4 years (two of them as deputy Chair) and was awarded an MBE for services to the tax profession in 2012.

Experience with Government and Tax authorities

Involved in the transition to Self-Assessment in the UK, and the related move from the preceding year basis to the current year basis in 1996 to 1998, lecturing to accountants throughout the UK on the changes and how to action them with their clients.

Presented a number of training sessions for HMRC and HM Treasury explaining the impact of recent tax changes on businesses and the likely practical outcomes. Frequently attend meetings with policy makers in HMRC and HM Treasury to assist with gaining insight into how proposals might work in practice and met with Ministers periodically on important tax issues. Given evidence in person to committees of both the House of Commons and the House of Lords, predominantly on the subject of the proposals for Making Tax Digital and the potential impact on businesses.

Chair of the HMRC Digital Advisory Group, providing help and support to HMRC in understanding the challenges that Making Tax Digital presents to small businesses and their

Draft Income Tax (Payment of 2019 Liability) (JERSEY) Regulations Review

advisers. My group worked closely with HMRC in the run up to the publication of the consultation documents in 2015 and made a formal response to the consultations. Also sit on the HMRC Making Tax Digital Programme Board as an external adviser.

Member of the Admin Burdens Advisory Board, an independent advisory group to HMRC monitoring the burdens the tax system imposes on small businesses, meeting quarterly to examine HMRC systems and practices and making recommendations on these, ultimately reporting to the Minister.

Involved in consultations led by the Office for Tax Simplification and attended a variety of workshops and meetings on tax simplification.

Editor of Tax Adviser magazine (the journal of the Chartered Institute of Taxation) for two years. Published guides on the Construction Industry Tax deduction scheme, small business tax issues and a variety of other topics. Editor of Tolley's Taxwise, a comprehensive guide to all aspects of tax computations in the UK and have served in other editorial posts and contributed to a wide range of tax publications.

Adviser Report

Rebecca's report can be found on the [review's page](#) on the States Assembly website.

Terms of Reference

To provide a high-level assessment of the [P.9/2021] Income Tax (Payment of 2019 Liability) Regulations set out by the Minister of Treasury and Resources*:

The Panel will:

Examine the rationale underpinning the proposed Income Tax (Payment of 2019 Liability) Regulations.

Assess if the proposed Regulations succeed in overall appropriateness and deliverability against strategic priorities.

Highlight any disparities from described options in P.118/2020 and the recommendations within the Corporate Services Scrutiny Panel's Report [R.7/2020].

Evaluate if the proposed regulations to the Income Tax (Payment of 2019 Liability) are fair and equitable.

Assess the implications of the proposals on public finances.

(*Review correlates to the timeline associated with the proposition)

Methodology

Since September 2020, the Panel have gathered evidence in several ways including:

- public hearing with the Minister for Treasury & Resources, Treasurer of the States, Assistant Minister, and relevant government officers.
- written views from relevant stakeholders (all submissions were published on the Corporate Services Scrutiny review section of the website).
- private briefings from relevant Ministers and officers.
- documentation provided to the Panel, upon request, by Ministers and Government officers in relation to the proposition.
- documentation in the public domain and other countries in relation to taxation.

Transcript for the public hearing can be accessed via the States Assembly [website](#).

Webcast for the public hearing can be accessed via the [States Assembly webcast site](#).

Conflict of Interest

The Corporate Services Scrutiny Panel are all liable to the payment of 2019 liability and are classified as Prior Year Basis taxpayers.

Review Costs

Adviser	£2,500
Public Hearing	£150



States Greffe | Morier House | Halkett Place | St Helier | Jersey | JE1 1DD
T: +44 (0) 1534 441 020 | E: statesgreffe@gov.je | W: Statesassembly.gov.je

