

# Consultation on the tax treatment of mutual trading

## Summary of responses to the consultation exercise.

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## 1. Executive Summary

- 1.1. Revenue Jersey consulted between the 1<sup>st</sup> April and 17<sup>th</sup> May 2019 seeking feedback on the preliminary findings of Revenue Jersey's review of mutual trading and the taxation of members' organisations ( and other mutual organisations ).
- 1.2. All the responses which were received to the consultation endorsed the preliminary findings of Revenue Jersey.
- 1.3. A theme within the responses was that whilst respondents supported the principles under which members' organisations are taxable, there was uncertainty on the practical application of these principles, and a need for guidance.
- 1.4. Revenue Jersey intends to conclude this stage of the review, and look to finalise this project by producing guidance on the practical application of these principles.
- 1.5. Revenue Jersey does not recommend bringing forward any legislative amendments, based on its preliminary review and the consultation responses.
- 1.6. Revenue Jersey would like to further involve the respondents ( and any other interested parties ) through comments on the guidance before its publication.

## 2. Introduction

- 2.1. Revenue Jersey consulted between the 1<sup>st</sup> April and 17<sup>th</sup> May 2019 on the preliminary findings of Revenue Jersey's review of mutual trading and the taxation of members' organisations ( and other mutual organisations ).
- 2.2. The background to the review was outlined in the consultation; and is also outline below.
- 2.3. In Budget 2018 Senator Ozouf lodged an amendment (Draft Budget Statement 2018 (P.90/2017<sup>1</sup>): Seventh Amendment) proposing that:

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<sup>1</sup> [https://statesassembly.gov.je/assemblypropositions/2017/p.90-2017amd\(7\).pdf](https://statesassembly.gov.je/assemblypropositions/2017/p.90-2017amd(7).pdf)

- 2.3.1. a review should be made of the principle that the profits from mutual trading are not taxed; and
- 2.3.2. that legislation should be brought forward in Budget 2019 in order to tax the profits of mutual trading for the year of assessment 2019.
- 2.4. The Council of Ministers (“the COM”) lodged comments to the amendment (Draft Budget Statement 2018 (P.90/2017): Seventh Amendment (P.90/2017 Amd.(7))<sup>2</sup> – Comments). In their comments the COM:
- 2.4.1. supported the proposition to complete a review into the principle that the profits from mutual trading are not taxed; but
- 2.4.2. did not support bringing forward legislation in Budget 2019 as this pre-determined the outcome of the review.
- 2.5. The vote on Senator Ozouf’s amendment was taken in two parts<sup>3</sup>. The States Assembly supported part 1) to undertake a review of the principle that the profits from mutual trading are not taxed, but rejected part 2) that legislation should be brought forward in Budget 2019.
- 2.6. The, then, Minister for Treasury and Resources committed to completing the review into the taxation of profits from mutual trading so that any legislative changes could be considered in the 2020 Budget (i.e. during 2019).
- 2.7. The consultation forms an important part of the promised review, being the public response to the findings to date.

### 3. Responses Received

- 3.1. The launch of the consultation was followed by activities to publicise it to potential stakeholders.
- 3.2. This publicity include inclusion in a letter to tax agents, and industry bodies from the Comptroller of Taxes, and posts on government social media accounts, specifically LinkedIn, Twitter and Facebook.

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<sup>2</sup> See footnote 1.

<sup>3</sup> <https://statesassembly.gov.je/Pages/Votes.aspx?VotingId=4837>

- 3.3. Revenue Jersey received only 4 responses, however each respondent had taken the time to respond fully to all the questions posed in the consultation.
- 3.4. The respondents were all closely linked to one sector, that of retailing.
- 3.5. One of the respondents has publically stated they have made a response to the consultation (please see page 16, 2019 Annual Report, Channel Island Co-Operative Society<sup>4</sup> ).
- 3.6. Revenue Jersey is of the opinion that those in other sectors may have agreed with the preliminary findings, but had no further strong views. It is acknowledged that there is greater concerns over the practical impacts of mutual trading and members' organisations, in the retail sector.

## 4. Responses

- 4.1. *Question 1. - Are you answering this consultation on behalf of a members' organisation? If so, which organisation(s)?*  
*Question 2. - Are you personally a member of a members' organisation? If so, which organisation(s)?*

The answers to these questions confirmed that both members' organisations and non-members' organisations responded to the consultation.

- 4.2. *Question 3 - If mutual trading surpluses (profits) were to be taxed, should this tax be levied on the members' organisation ?*  
*Question 4 - If the mutual trading surpluses (profits) were to be taxed, should this be on the members themselves?*

The answers to these questions, of those who commented, indicated that if mutual trading was to be taxed it would be best done at the organisational level.

The need to ensure any taxing approach followed the principles already established in tax law, and the practical problems of administering the

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<sup>4</sup> [https://www.channelislands.coop/media/237379/tdn4590-cicoop\\_annualreport\\_2019-v39.pdf](https://www.channelislands.coop/media/237379/tdn4590-cicoop_annualreport_2019-v39.pdf)

taxation of the members of members' organisations, particularly where they have significant memberships, were both raised.

However the overall consensus was that the surpluses generated from mutual trading should not be taxed on either members' organisations or their members.

*4.3. Question 5 - If members are to be taxed on the 'divis' / distributions from members' organisations should they be entitled to a credit for any tax already paid by the members' organisations?*

*Question 6 - Does your answer to Question 5 depend on whether the tax was paid on mutual trading surpluses (profits) or non-mutual trading profits?*

The responses agreed that where the members' received income which had already been taxed, they should be entitled to a credit if it was to also be taxed on the members. In their responses to question 5, they did not distinguish between the mutual trading surpluses and non-mutual trading profits being distributed.

One respondent questioned whether a concession would be required to allow for this.

*4.4. Question 7 - Do you think that Jersey should follow the alternative approach as adopted in Guernsey and New Zealand ?*

None of the respondents were in favour of changing the current approach in Jersey to one which resembled those in jurisdictions like Guernsey and New Zealand.

*4.5. Question 8 - What are your views on the wider impacts of members' organisations on Jersey?*

*Question 9 - How important is the protection of these type of organisations to Jersey?*

All respondent agreed that members' organisations made significant contributions to Jersey and the lives of its people. They all considered that, particularly for smaller, and quasi-charitable, organisations any additional burdens in terms of tax or administrative costs should be avoided, to protect these organisations.

*4.6. Question 10 - Do you think tax treatment and the associated administrative and compliance costs would significantly reduce the number and viability of these organisations?*

The responses varied and include recognition of the risks; e.g. "there is certainly a danger that the viability of these organisations could be threatened", and another respondent "for some of them the associated administrative and compliance costs would simply be too much".

Another respondent pointed out that where an organisation made both mutual trading surpluses and non-mutual profits, it should keep books and records, "in the same way that any other taxpayer needs to."

*4.7. Question 11 - Do you think the present tax rules on mutual trading are detrimental to other organisations or institutions? If so, in what respects?*

The respondents concentrated on the retail market, and the perceived advantages that the mutual 'status' of the Channel Islands Co-Operative Society, gives to this retailer.

It is clear from the responses that there are various assumptions being made, on both the tax position of this entity, and the operating practices of Revenue Jersey.

There also appears to be some misunderstandings of the limitations and obligations imposed on an organisation which wishes to claim it is trading mutually, which ultimately restrict any benefit from this type of treatment to the members.

Respondents expressed uncertainties as to how Revenue Jersey interpreted the Income Tax (Jersey) Law 1961 in relation to members' organisations, one respondent alluding to the fact they had to surmise from the guidance produced by another jurisdiction.

One respondent clearly pointed out there were uncertainties and called for guidance on mutual trading, which they felt would allow members' organisations to correctly assess what their taxable profits might be, and would assist Revenue Jersey in taking action against any non compliant organisations.

## 5. Conclusion

- 5.1. Revenue Jersey has concluded from the low number of responses, despite widely publicising this consultation, that in general this is not an area which is causing wide concern to either business or the public in Jersey.
- 5.2. The responses received were remarkably consistent in stating that there is no reason to change the current principles, and that Jersey benefits from its members' organisations which we should strive to protect.
- 5.3. Revenue Jersey takes from this that its preliminary review has not brought forward any factors which would cause concern, and that the alternative approaches of jurisdictions like Guernsey and New Zealand are not attractive in Jersey.
- 5.4. The respondents agreed that where profits of a members' organisation had been subject to tax, a tax credit should be available to the member. Currently there is a facility in the Law to allow this, but it could create difficulties in administration. At this present time Revenue Jersey is only aware of one members' organisation in Jersey which regularly makes cash payments to its members, and in 2012 the States Assembly specifically exempted this payment from the scope of tax under Article 115 Income Tax (Jersey) Law 1961<sup>5</sup>.
- 5.5. The responses all highlighted that the practical implementation of the principles of mutual trading and members' organisations, are not clearly understood. Revenue Jersey will take forward, as suggested in one response, the need for guidance on this area.
- 5.6. Revenue Jersey would like to further involve the respondents ( and any other interested parties ) through inviting comments on drafts of the guidance before its final publication.
- 5.7. In the meantime, Revenue Jersey will engage with the largest members' organisations, and is happy to discuss with other members' organisations, around particular difficulties they may have in understanding how to apply the principles to their tax affairs.

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<sup>5</sup> Article 115 (r) dividends paid by The Channel Islands Co-operative Society Limited

5.8. On the basis of the comments received and in light of the findings of its review, Revenue Jersey does not intend to recommend to the Minister for Treasury and Resources that there is a need to change tax legislation.