

# Tax compliance framework

**Proposed legal and policy changes 2017-2019**

**Summary of responses to the consultation  
exercise**

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## 1. Foreword from the Minister for Treasury & Resources

I want to thank those who took the time to respond to the Taxes Office's consultation on tax compliance and penalties that was launched at the end of March 2017. Many of the responses were comprehensive and will no doubt influence the development of the Island's tax system over the next couple of years.

I am convinced that most Islanders seek to comply with their tax obligations – understanding the direct link between the tax they pay and the public services, such as health and education, that the States delivers. We need a tax system that incentivises taxpayers to be compliant and pay on time, whilst providing the Comptroller with the right tools to deal with the minority who choose not to comply.

The core of the existing compliance framework is over 50 years old and, despite having served the Island well for many years, it increasingly lags behind accepted international best practice in this area. The process of updating it will undoubtedly take time, however I intend to start that process shortly with the introduction of a new Revenue Administration Law which seeks to consolidate the administration of the key taxes within a single piece of legislation.

A phased approach to this new law will see administrative provisions improved and consolidated over the next couple of years. One area that will be addressed in the first phase is the introduction of penalties which can be levied by the Comptroller and which change in severity based on the behaviour of the taxpayer. Under these proposals the person who makes an innocent error will have no penalty to pay, whilst those deliberately seeking to avoid their obligations will face much stiffer penalties. In the most serious cases prosecution through the courts will remain as the ultimate sanction.

I would like to remind Islanders that the Taxes Office is running a disclosure opportunity until the end of 2017, under which people who think they may have made a past mistake with their tax are able to make a declaration, without the worry of additional penalties or interest. This opportunity closes on 31 December 2017, with stiffer penalties being proposed in the future, so anyone who wishes to make a disclosure should do so soon.

Of course the Taxes Office needs to play its part too: it is essential that we make it as easy as possible for people to file their tax returns and pay their tax. This Council of Ministers is investing a significant amount of money in delivering a new IT system for the Taxes Office. This investment is key to the development of the future capability of the Taxes Office, but more importantly it will lead to noticeable and positive changes for taxpayers, including online filing and assessment, and the ability for taxpayers to manage their tax affairs from home or on the move.

Once again I am thankful to those who have contributed and I firmly believe that the changes ultimately implemented will benefit the Island as a whole.

**Senator Alan Maclean**

Minister for Treasury and Resources

## 2. Introduction

- 2.1. The Taxes Office published its consultation document on the tax compliance framework on 27 March 2017 in order to seek views on the future administration of the taxes laws, with specific emphasis placed on the compliance sections of the laws.
- 2.2. The consultation examined:
- incorrect declarations;
  - penalties for late filing and late payment;
  - charging of interest on late payments;
  - record keeping; and
  - filing due dates.

It indicated the Taxes Office view on the way forward and posed questions for consideration by interested parties.

- 2.3. The Taxes Office thanks all those who responded. In total 23 written responses were received, with the fullest responses coming from representatives of the accountancy and tax agent professions.
- 2.4. This document first provides an overview summary of the responses, and then summarises the answers received in respect of the questions posed in the consultation document. Where appropriate we provide a further Taxes Office view on the proposed way forward.
- 2.5. Only four respondents specified (as requested) whether they were content for their responses, or their names, to be published. In light of that, we have currently withheld all names of respondents.

### Overview of general comments

- 2.6. Respondents were largely supportive of most of the proposals set out in the consultation document, understanding the need for modernisation of the tax law in advance of introducing and programming new IT systems. There was also wide support for the Taxes Office to be able to levy civil penalties in place of the current court-imposed criminal fines.
- 2.7. Some respondents questioned the timing of the consultation and suggested that it would be preferable first to introduce online filing and assessment for personal taxpayers, followed by new proposals for compliance. This is not feasible given the need to specify the operating parameters of the new IT system within the next few months. Ideally, certain measures do need to be put to Ministers and the States Assembly so that they can be built into the design of new IT system currently being procured.

- 2.8. Concerns were also raised, particularly by larger tax agents, about the relative importance of the subject matter of this consultation, compared to other domestic and international tax matters which might warrant review. One respondent challenged whether the evidence base was available to justify changes to the compliance framework. Another suggested presenting a statistical analysis demonstrating that the proposed compliance framework is proportionate.
- 2.9. While the Taxes Office continues to work with a very old IT system it is difficult to generate meaningful statistics about taxpayer compliance levels. However, from what tax officers do observe on the ground, it is unlikely that Jersey's taxpayer population is more or less likely to deviate from internationally observed norms, where the majority of taxpayers are both willing and able to comply with their tax obligations. Notwithstanding that, international research indicates that substantial minorities of taxpayers are non-compliant in one way or another (failure to register; failure to file; failure to make correct returns; and failure to pay) and that small minorities do actively seek to evade their tax obligations. Any modern tax compliance framework should therefore seek to incentivise voluntary compliance. It should be as frictionless as possible for taxpayers who are willing to comply; and proportionately punitive for those who are careless and who deliberately evade their obligations.
- 2.10. Aside from addressing the questions posed, respondents consistently highlighted similar themes including: the appeals process, a unifying administrative law, and the availability of guidance. These points are considered separately at the end of this document.

## Key changes

- 2.11. Decisions on the way ahead are for Ministers. A number of changes to the Taxes Office's proposals have been made in response to the results from this consultation exercise. They are summarised as follows:
- The removal of the 'gross carelessness' category from the behavioural penalty matrix: this intermediate category was considered by many respondents to create scope for confusion between the categories of 'careless' and 'deliberate' behaviour;
  - A clear preference to charge penalty interest in respect of late payments, following an initial penalty, rather than opting for a monthly or other periodic charge;
  - The withdrawal of the proposal for a penalty for ITIS employers, based on the number of employees it has. Respondents who expressed a view overwhelmingly felt that the advantages of a simple, fixed penalty outweighed the arguments for a proportionate penalty based on employee numbers; and
  - The withdrawal of the proposal for the Taxes Office to be able to contact directly employees whose employers have been non-compliant with respect to their ITIS obligations.

## Next steps

- 2.12. Legislative improvements are expected to commence with the initial stages of a new Revenue Administration Law, due to be lodged in 2018, and will continue in subsequent years.
- 2.13. The Taxes Office intends to continue developing the issues discussed in this document. Where appropriate, the Taxes Office will, of course, continue to consult with stakeholders.

### 3. Incorrect declaration penalties

***Question 1: Do you agree with the broad categories of behaviour, and the associated standard penalties? If not, what other categories would be more appropriate? Particular regard should be had to the tables in Appendix A.***

- 3.1. Respondents generally agreed with the principles of the proposed behavioural penalties. Emphasis was placed on the importance of publishing illustrative examples and clear guidance about each category of behaviour, including any internal guidance produced for tax officers, to ensure maximum consistency in the application of penalties. Most respondents emphasised the need for an appeals procedure to be put in place.
- 3.2. Concern was expressed by a number of respondents about the potential for there not to be a clear enough distinction between the ‘careless’ and the ‘gross carelessness’ categories.
- 3.3. One respondent argued that behavioural penalties were not the right approach because it was not in line with the approach of similar international finance centres.

#### Taxes Office response

- 3.4. Clear definitions of each category of behaviour are clearly important and would need to be provided both to tax officers and taxpayers at the same time on the Taxes Office website (it is the general approach of the Comptroller not to produce supplementary internal guidance, except where absolutely necessary).
- 3.5. The Taxes Office will continue to take the view that all administrative decisions made by tax officers should be subject to internal re-consideration and capable of appeal to the (independent) Commissioners of Appeal.
- 3.6. The Taxes Office will no longer recommend that the Treasury Minister considers introducing the intermediate “gross carelessness” category of behaviour in the proposed scheme of behavioural penalties. We have therefore modified our proposed penalty table, removing the category of ‘gross carelessness’. Consequently, the standard penalty for careless behaviour has been increased to 30% to ensure there is no gap between the two remaining categories. The changes are shown in Table 2.2 (amended).
- 3.7. Although similar international finance centres do not have a behavioural penalty framework, having regard to international best practice we consider this to be the most appropriate way forward.

***Question 2: Do you consider the proposed increases and reductions to the standard penalty to be appropriate? What increases and reductions would you propose instead?***

- 3.8. Respondents were supportive of proposals to be able to increase or reduce the standard penalties, and were particularly supportive of the reductions available in respect of voluntary disclosures, which were considered to encourage ‘self-policing’. There was a broad call for more detailed information and clear guidance.
- 3.9. There was some confusion as to under what circumstances a maximum penalty would be applied, as opposed to the standard penalty.

**Taxes Office response**

- 3.10. The Taxes Office recognises that more work will need to be done to set out the exact circumstances in which standard penalties would be reduced. Draft guidance notes will be released for comment in due course.
- 3.11. A maximum penalty, as opposed to a standard penalty, would only be applied in ‘repeat cases’. A repeat case is where the same taxpayer has been found to have made a second or further incorrect declaration within a period of five calendar years of making the first incorrect declaration.
- 3.12. It is anticipated that the Taxes Office’s general position will be that the standard penalty would be applied with reductions available for high quality disclosures. We also consider a minimum penalty in respect of each category of behaviour to be vital in ensuring consistent application.

***Question 3: In principle, do you support the denial of anonymity in cases where a taxpayer has accepted a civil penalty in respect of very serious tax evasion? Comments are welcomed on the definition of ‘very serious tax evasion’.***

- 3.13. Perhaps unsurprisingly, the proposition to deny anonymity in certain cases drew a mixed response. Some respondents supported the measure, in limited scenarios, while others suggested that the withdrawal of anonymity may act as a barrier to dealing with such serious cases (for example, that it may prevent disclosure or co-operation).
- 3.14. Some respondents thought it preferable simply to level greater financial penalties where they are dealt with civilly rather than criminally which allows them to remain anonymous. One respondent was of the view that in cases of egregious tax evasion only a criminal approach would be appropriate, in which case anonymity would be denied.

**Taxes Office response**

- 3.15. For the avoidance of doubt, the proposal to deny anonymity to certain taxpayers would only apply in those serious (i.e. deliberate) cases where there had been a serious loss of taxes due to the people of Jersey. That said, the Taxes Office is minded to advise Ministers to legislate so that the Taxes Office can routinely deal with any serious cases of tax evasion civilly (with appropriately proportionate penalties); and retain powers to investigate criminally on an exceptional basis.

## 4. Administrative penalties

***Question 4: Do you agree that the introduction of a 'penalty unit' is appropriate? We welcome comments on any issues that you envisage with a penalty unit regime.***

- 4.1. Respondents were either supportive or indifferent to the introduction of a penalty unit regime. One respondent suggested harmonising it with the current standard scale of fines to reduce complexity.

### Taxes Office response

- 4.2. The Taxes Office maintains the view that a penalty unit regime would be administratively easier, especially when changing the penalty amounts in the future. We do not support the proposition to align with the (criminal) standard scale of fines which only has three levels of monetary fine.

## Registration and notification

***Question 5: Do you agree that it is unnecessary to introduce a separate registration requirement and associated penalty, solely for tax purposes?***

- 4.3. Respondents broadly agreed that there should be no separate registration requirement for tax purposes, although two respondents pointed out that the information received from the Social Security Department would generally relate to employed individuals. Self-employed individuals and pensioners might not be captured using the current method, unless they become employed, or buy or lease property.

### Taxes Office response

- 4.4. We agree that as a principle there should not be a separate requirement to register with the Taxes Office. However, the requirement to obtain a registration card under the Control of Housing and Work (Jersey) Law 2012 does not sufficiently capture all potential taxpayers. Therefore, there may need to be a legal requirement for individuals to register with the Taxes Office, when their income warrants it. Consideration will be given to new registration (or notification) requirements, but not to the detriment of the States-wide 'Tell Us Once' initiative.

***Question 6: Do you agree that the increase (to £600) of the penalty for failing to register, either as an employer or for GST, is appropriate? If not, what penalty do you consider to be more appropriate?***

- 4.5. The proposal for a penalty of £600 for failing to register as an employer or for GST drew a mixed response. Although some were supportive, others felt that £600 was

too high for some small businesses. Two respondents considered a lower initial penalty, followed by monthly increases, to be more appropriate.

- 4.6. Emphasis was placed on the importance of (i) communicating any new requirements for businesses, and (ii) having a route through which to appeal any penalty.

#### Taxes Office response

- 4.7. We do not support the view that a £600 penalty is too high. The threshold for GST registration remains a turnover of £300,000. By comparison, for example, the threshold for UK VAT registration is £85,000 and the penalty for failing to register with HMRC could be up to 100% of the potential lost revenue. Similarly, the current court-imposed fine for failing to register as an employer is level 3 (£10,000) on the standard scale, which far exceeds the current proposal.
- 4.8. General points made about appeals and guidance are addressed in Section 9 at the end of this document.

#### ***Question 7: Do you agree that the legal onus should be on the taxpayer, rather than the Comptroller, to take the appropriate steps when the circumstances alter to the extent that a return is required (for example, after the Comptroller has closed the taxpayer file)?***

- 4.9. Respondents were mixed in their comments on the proposal to shift the onus from the Comptroller to the taxpayer as to when they are likely to have exceeded the exemption thresholds. Support was qualified by concerns that taxpayer obligations needed to be clearly communicated. Others felt that it may be more burdensome for people to monitor their income level each year rather than to file an annual return.
- 4.10. Two respondents suggested removing certain groups from the tax return cycle (i.e. those with very simple tax affairs whose income was never likely to exceed the exemption thresholds).

#### Taxes Office response

- 4.11. The Taxes Office continues to believe that it is reasonable to take people out of the annual return cycle if all evidence suggests they are unlikely to generate income above the exemption thresholds (for example those whose income is solely the old age pension). However, it also recognises that some people's income levels may increase dramatically even in later life (for example, by way of inheritance). In those circumstances it is more reasonable for the individual to be expected to begin to return their income to the Comptroller, than to place the onus on the Comptroller to discover the fact. International comparisons indicate that the tax laws of most jurisdictions place an onus on people to come forward to declare

significant changes in their personal circumstances which affect their tax obligations.

- 4.12. A practical problem with exempting certain groups of taxpayers from filing is that it may mean they do not get a chance to claim an allowance, e.g. for a new-born child; although consideration will be given for a 'check and approve' process for certain groups of taxpayers, especially those with simpler affairs, in place of completing a full annual return.

## Late filing

***Question 8: Is an initial penalty of 6 PU (£300), followed by monthly penalties of one PU (£50) per month, an appropriate sanction for late personal income tax returns? If not, what alternatives, such as daily penalties or tax-geared penalties, do you consider to be more appropriate?***

- 4.13. A significant majority of respondents were supportive of the view that a standalone penalty for late filing is insufficient. There was general agreement that a £300 initial penalty and £50 monthly penalties was about right.
- 4.14. However, a number of respondents noted that communication to the taxpayer, prior to the filing deadline, should be improved to promote voluntary compliance; that notification should be quickly given to those taxpayers who have missed a deadline, and before any further penalties are charged. Two respondents suggested leaving a delay of three months following the initial deadline before charging any further penalties.
- 4.15. Some concern was raised over the issue of being able to submit a timely return when information is outstanding (for example, where a return involves foreign income).
- 4.16. One respondent indicated that applying the same level of penalty to all individuals was regressive, as it has a much greater impact on lower earners. Therefore a geared penalty may be more equitable.

## Taxes Office response

- 4.17. The majority of taxpayers understand and meet their statutory obligations with regard to deadlines. While a degree of reminding and chasing of taxpayers who fail to meet deadlines is inevitable, the cost to compliant taxpayers has to be borne in mind. With the new IT system it should be easier to remind people of their obligations by email and text message, reducing costs. We consider this negates the need to leave a delay in charging further penalties.
- 4.18. While geared penalties were considered, the view was taken that flat penalties are far easier for taxpayers to understand. In order to counter flagrant and

persistent late filing, the criminal sanctions available in Article 136 of the Income Tax Law could be employed.

- 4.19. Any revised late filing penalty in respect of personal tax returns would similarly apply to other return types, such as partnerships and trusts.

***Question 9: Do you agree that the additional monthly penalties (of £100) for late company income tax returns are appropriate? If not, what further penalties would be more appropriate?***

- 4.20. Responses largely mirrored those to Question 8, with the exception of two respondents who saw no reason for a higher monthly penalty for companies.
- 4.21. One respondent questioned the proportionality of potentially charging penalties of £1,400 on a company that is subject to tax at 0%.
- 4.22. Another respondent noted the ‘inherently unfair’ two-tier system for filing company tax returns. This comment is taken to refer to the availability of the ‘global returns’ mechanism that is available to certain companies, based on their activities and beneficial ownership.

**Taxes Office response**

- 4.23. The tax law expects that natural persons and entities will apply due diligence in meeting their tax obligations and devote appropriate resources to the tasks required to be done. Generally speaking, that expectation is proportionately higher for companies which enjoy a number of rights and benefits from incorporation; and many, of course, enjoy a standard rate of tax of 0%. It is equally important that “0% companies” meet their tax obligations with regard to returning relevant information which allows the Treasury to monitor the health of the economy and maintain the current system of corporate taxation.
- 4.24. With regard to the criticism of the two-tier system, the simplified global returns mechanism was intended to provide administrative ease for Jersey-based service providers, many of which administer hundreds of companies that fall into this category. The returns submitted by companies have evolved since the introduction of the 0/10 tax regime. This process is likely to continue in the future, balancing the collection of relevant information with administrative simplicity where possible.

***Question 10: In respect of late ITIS returns, is it reasonable to introduce penalties for employers based on the number of employees it has, rather than having a fixed penalty? Is the proposed penalty Table 3.1 fair?***

- 4.25. This proposition drew a mixed response, with a slim majority of respondents rejecting the idea. A few respondents indicated it was unfair to impose a penalty

solely based on the number of employees, which may not be a good indicator of the financial position of a company. One respondent noted that a penalty based on the number of employees would protect small businesses.

#### **Taxes Office response**

- 4.26. We acknowledge there is a balance to be struck between the principles of fairness and simplicity.
- 4.27. Consideration will instead be given to recommending to the Minister a fixed penalty of £300 for the late filing of ITIS returns (see Consultation, paragraph 3.27), regardless of the number of employees. We will also consider escalating penalties for persistent offenders.

#### ***Question 11: Do you agree that it is fair to introduce a daily or monthly penalty in addition to the initial penalty for late ITIS returns? If not, what alternatives do you propose?***

- 4.28. Most respondents agreed that an initial penalty alone was insufficient to change attitudes towards compliance. Where respondents indicated a preference, monthly penalties were considered to be most reasonable.

#### **Taxes Office response**

- 4.29. We would envisage employers being notified of the initial penalty, along with a warning that a further penalty will be charged on the 15<sup>th</sup> day of the following month if the return is not lodged in the interim. We consider additional monthly penalties of £100 to be appropriate.
- 4.30. In order to achieve this, consideration is being given to advising Ministers to make online returns compulsory for employers, subject to certain caveats for those that cannot access online services.

#### ***Question 12: We invite views on the principle of waiving 'first offence' penalties for employers, and whether consideration should be given to a broader implementation of this principle.***

- 4.31. The proposal to waive 'first offence' penalties received widespread support. Respondents agreed that it would promote better compliance for recurrent obligations, such as ITIS and GST returns. It is considered less useful in respect of annual filing obligations.

**Taxes Office response**

- 4.32. Further consideration will be given to the wider adoption of the principle of waiving first offence penalties. An accurate 'compliance history' may need to be established in the new IT system to facilitate this.

***Question 13: Do you agree that the Taxes Office should be permitted to contact directly employees in cases where an employer has failed to submit ITIS returns? Is a non-compliant period of 2 months appropriate?***

- 4.33. Respondents were generally opposed to the proposal to allow the Taxes Office to contact employees directly, considering it unnecessary in light of the foregoing proposals.

**Taxes Office response**

- 4.34. The Taxes Office does not propose to recommend this course of action to Ministers. The Comptroller will continue to give weight to pursuing employers who collect income tax from their employees' salaries and fail to remit it timeously to the Treasury.

***Question 14: In respect of late GST returns, do you consider (1) a fixed penalty; or (2) a differentiated penalty based on turnover, to be likely to be more effective and/or proportionate to the non-compliant behaviour?***

- 4.35. Respondents were all in favour of a differentiated rather than fixed penalty, with most indicating that turnover was an appropriate factor. However, one respondent argued that GST payable may be a more equitable basis of calculation than turnover, since a business with a large turnover could have a small GST liability due to the type of supplies they make (e.g. predominantly exempt supplies).

**Taxes Office response**

- 4.36. Many jurisdictions have differentiated penalties for businesses that relate to their size, with the categories of small, medium, and large frequently being based on taxable supplies (i.e. taxable turnover) made by the business (rather than tax paid). Based on the responses received it is clear that a differentiated penalty should be adopted in the future. Further consideration will be given to what factors should be used when determining the differentiated penalty.

***Question 15: In respect of late GST returns, do you agree there should be further monthly penalties, in addition to the initial penalty, when the failure continues? Are there any other options, such as daily penalties, you think we should consider?***

- 4.37. The majority of respondents agreed that further monthly penalties would represent a step in the right direction in order to encourage compliance.

### Taxes Office response

- 4.38. The Taxes Office continues to consider additional monthly penalties to be necessary. The format of any additional penalty is likely to be similar to the format of the initial penalty.

### Late payment

***Question 16: In respect of late personal and corporate income tax payments, do you agree that the proposed additional 5% surcharges will promote better compliance? What alternatives, if any, do you think we should consider?***

- 4.39. Respondents were sceptical that additional 5% surcharges at 3 and 6 months would encourage better compliance in all cases. They suggested that the reason for failing to pay is often cash flow issues, in which case further penalties would not address the issue. Some respondents considered late penalty interest (see Question 19) to be a more appropriate measure.
- 4.40. Two respondents also raised more general questions over the circumstances under which the surcharge is applied, with one suggesting that penalties/surcharges/interest should be suspended in cases where there is a genuine dispute with the assessment.

### Taxes Office response

- 4.41. Consideration will be given to adopting a penalty interest regime in place of additional surcharges.
- 4.42. With regard to disputed assessments, the Taxes Office considers that, at least during the short-term (i.e. subject to any review of the appeals process), an appeal should contain the appellant's estimate of the tax that will become payable on the determination of the appeal. Penalties/surcharges/interest would be backdated upon resolution of the appeal. Entirely suspending sanctions may discourage the appellant to settle the appeal in a timely manner.

***Question 17: For employers who continue to fail to remit ITIS deductions, do you consider a monthly 5% penalty to be reasonable? If not, what measure would you propose instead?***

- 4.43. This proposal drew a mixed reaction, although respondents recognised that further penalties, in addition to an initial penalty, are necessary. A slim majority preferred a penalty interest approach to cases where there are continued delays.

**Taxes Office response**

- 4.44. Consideration will be given to a penalty interest approach for failing to remit ITIS deductions on time.

***Question 18: Is there any reason why the proposed compliance framework and civil penalty regime (see Table 3.4) cannot be extended to the pension sector?***

- 4.45. Respondents agreed the compliance framework could be extended to the pension sector. Caution was expressed with regard to levying a late return penalty for pension providers under the current rules (i.e. where a nil liability would result in a nil penalty).

**Taxes Office response**

- 4.46. Consideration will be given to aligning the obligations of a pension scheme manager with similar obligations in respect of corporate income tax and GST.

***Question 19: Is the charging of late penalty interest a realistic alternative to the surcharge regime? Are there any alternatives we should consider?***

- 4.47. Some respondents argued that late penalty interest would provide an incentive to pay sooner rather than later, while others suggested that the surcharge regime gives taxpayers a set deadline.
- 4.48. One respondent stated that in the event that penalty interest is introduced, an appropriate appeals mechanism should be put in place.
- 4.49. There was some confusion as to what was being proposed in terms of from when penalty interest would be charged.

**Taxes Office response**

- 4.50. It is our view that a combination of the surcharge and penalty interest is more effective than either alone. The aim of the surcharge is to ensure payments are made before the payment deadline (i.e. currently the first Friday after the first Monday in December, following the year of assessment), whereas the aim of penalty interest is to encourage payment as early as possible beyond the deadline date.
- 4.51. We would expect neither statutory interest nor penalty interest to accrue from the date the assessment is issued. Article 39 of the Income Tax Law, which states that the tax is “due and payable” the day after the date the assessment was made, will need to be amended accordingly.

- 4.52. The Taxes Office's revised proposal is that the 10% surcharge in respect of late payment should remain in place, with daily penalty interest being imposed three months following the deadline date. This would ensure that only significantly delayed payments would face penalty interest.
- 4.53. The proposed penalty interest rate would be 10% above the statutory interest rate (see section 4 below).
- 4.54. We would envisage that penalty interest could be waived in the same way the surcharge can be currently waived under Article 411 of the Income Tax Law.
- 4.55. For the avoidance of doubt, penalty interest would be charged in addition to statutory interest.

## 5. Statutory interest

**Question 20: The ‘Long-Term Tax Policy’ document from September 2014 proposes a monthly interest charge, compounded if it remains unpaid. Do you consider a daily or monthly interest charge to be more appropriate? (assuming there are no IT considerations)**

- 5.1. Respondents were strongly in favour of a daily interest charge, rather than a monthly charge.

### Taxes Office response

- 5.2. Upon the introduction of the new IT system it remains the Taxes Office’s intention to introduce a daily interest charge, compounded each month, in respect of all tax debt.

**Question 21: We invite comments on the proposed debit interest rate of 8% above the BoE base rate.**

- 5.3. Respondents felt strongly that the proposed interest rate of 8% was too high. Some pointed to the fact that during the previous financial crisis there were no banks available to lend in Jersey, which meant some businesses and individuals were at risk of being driven into insolvency. A high interest rate charged by the Taxes Office was considered by some to increase this risk.
- 5.4. The general view was that the interest rate should be nearer that charged by HMRC, which is currently 2.5% above the Base Rate (i.e. 2.75%).

### Taxes Office response

- 5.5. The Treasury, on behalf of the people of Jersey, should not – and cannot – be the “lender of first resort” by default. The sole function of charging interest is to compensate the people of Jersey for the cost of providing credit to the minority who do not pay their taxes on time.
- 5.6. The rates of interest charged should encourage defaulting taxpayers to resort to commercial lenders. There are no clear international standards with regard to interest rates charged by tax administrations. For example, in the Republic of Ireland a daily rate of interest charge is charged that equates to 8% per annum;<sup>1</sup> in New Zealand the debit interest rate is currently 8.22%.<sup>2</sup>

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<sup>1</sup> <http://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-41/41-00-28.pdf>

<sup>2</sup> <http://www.ird.govt.nz/how-to/debt/penalties/interest/interest-overview/interest-rates.html>

- 5.7. However, it is acknowledged that there could be an economic risk in charging a high interest rate on those who simply cannot afford to pay it.
- 5.8. We therefore propose to advise Ministers that a rate of at least 3% above the Base Rate would be appropriate in the current market conditions. Flexibility would be needed as market conditions change, suggesting the need to be able to amend the rates by secondary legislation (Ministerial Order or Comptroller's Direction).

**Question 22: Do you agree that interest should be charged from the day following the original due date? Comments on a grace period and a *de minimis* would also be appreciated.**

- 5.9. While there was some support for the charging of interest following the due date, more respondents favoured a grace period during which interest is not charged, with suggestions ranging from 30 to 60 days following the due date. There was also support for a *de minimis* level under which interest is not charged.
- 5.10. Some respondents voiced concern over what is the legal 'due date', and one comment was made regarding the difficulty in interpreting the current payment statements, which often affects a decision to make a payment.

**Taxes Office response**

- 5.11. The consultation document suggested that a grace period would undermine the purpose of having a deadline. However, those who pay late would suffer an initial 10% surcharge, which should be a sufficient to support the integrity of the deadline.
- 5.12. That being the case, we propose to recommend that Ministers support a 30 day grace period following the initial deadline during which interest will not be charged.
- 5.13. From an administrative perspective a *de minimis* threshold below which interest will not be charged is attractive. It would also serve as a 'buffer' to ensure that minor delays in payment do not create negligible amounts of interest that would be uneconomical to collect. The Taxes Office therefore proposes that it would not charge interest on balances below £300.
- 5.14. Reference should be made to paragraph 4.51 above, in which it is acknowledged that Article 39 of the Income Tax Law, regarding the payment due date, would need to be amended accordingly.
- 5.15. To address the pertinent point made about payment statements, the new IT system will allow the taxpayer (or agent) to log in and view payments in real time.

**Question 23: Do you agree that it is fair that the rate of repayment interest is set at the same level as the BoE base rate?**

- 5.16. Respondents were generally in agreement that a repayment interest rate of 0.25% was fair, although the large discrepancy between the proposed debit and credit interest rates was highlighted. One respondent noted the current repayment interest rate in the UK (0.5% p.a.) was currently twice that being proposed in Jersey.
- 5.17. Another respondent accepted that, because of the way in which ITIS operates, it could be difficult to determine the reason for an overpayment and subsequently whether or not repayment interest was due.

**Taxes Office response**

- 5.18. The Taxes Office continues to believe that pegging the repayment interest rate to the Bank of England base rate is equitable.
- 5.19. We will continue to analyse whether there is an opportunity to extend repayment interest to cases where taxpayers have overpaid their tax.

**Question 24: We welcome comments on the interaction between the charging of debit interest and those individuals who pay tax through ITIS, especially where an employer has not submitted ITIS returns on time.**

- 5.20. Respondents were in agreement that individuals should not be penalised in cases where their employer has failed to make an ITIS submission.

**Taxes Office response**

- 5.21. The Taxes Office agrees that employee-taxpayers should not face an interest charge when their employer has failed to remit ITIS returns or payments.
- 5.22. We had hoped to address situations where an individual is in receipt of both employment income, and non-employment income that is not subject to ITIS. In our view the most straightforward approach would be to not initially charge interest in cases where taxpayers pay the majority of their tax via ITIS. Consideration could then be given to develop the interest regime over time to incorporate a wider range of cases.

## 6. Record keeping and production of documents

***Question 25: We welcome comments on the proposed record keeping requirements, with respect to income tax, and employer ITIS.***

- 6.1. The proposed record keeping requirements were broadly welcomed.
- 6.2. However, one respondent voiced concern that without a statutory enquiry window the proposed measures would not align with the current ability of the Taxes Office to challenge an assessment within five years of the end of the year of assessment.

### **Taxes Office response**

- 6.3. The Taxes Office will give serious consideration to the introduction of a statutory enquiry window.
- 6.4. For the avoidance of doubt, these proposals would also extend to other entities that are liable to pay income tax, such as trusts and partnerships. We would envisage the tax requirements harmonising, rather than being at odds with other legal obligations to keep records.

***Question 26: Do you agree there should be civil penalties in respect of carelessly failing to keep records, in addition to standard scale criminal fines for more serious offences?***

- 6.5. Respondents were generally in agreement with the proposal to introduce a civil penalty for carelessly failing to keep records. There was some concern over what exactly would be considered a 'careless failure'.
- 6.6. One respondent commented on the expected timeframes within which requested information would be expected, and noted that the proposed 30 day timeframe would only suit 'most circumstances' which implied that it would not be reasonable in all circumstances. The respondent also called for detailed guidance and an appeals process.

### **Taxes Office response**

- 6.7. It is acknowledged that along with new legislation there must be clear guidance made available to taxpayers. Guidance would cover areas including (but not limited to): retention periods; what records should be kept; condition of records; audits; penalties; and mitigation of penalties.
- 6.8. Further consideration will be given as to whether a civil penalty is an appropriate sanction in respect of failing to keep records.

- 6.9. With reference to the proposed 30 day timeframe, it is not suggested that this would be a statutory requirement in all requests for information. Rather the officer would make a judgment as to what is an appropriate timeframe, having regard to the volume and complexity of the information requested. If anything, it is envisaged that a 30 day timeframe would be a minimum period.

***Question 27: Do you agree there should be both criminal and civil penalties available to the Comptroller, in respect of ITIS non-compliance?***

- 6.10. The proposal that there should be criminal penalties for ITIS non-compliance, in addition to civil penalties, drew a mixed response. A slim majority favoured harmonising ITIS with other areas of tax, but a significant minority indicated that they felt that criminal penalties were excessive.

**Taxes Office response**

- 6.11. The introduction of a criminal penalty merely brings ITIS into line with the income tax and GST regimes. A criminal penalty is commonplace in many jurisdictions in the event of a failure to keep records. We would envisage criminal penalties only being pursued in the event of a serious or deliberate failure, but consider them to be an important tool available to the Taxes Office, especially considering the obligations that employers have in respect of the employees from whom, ostensibly, they are deducting tax contributions.

***Question 28: Do you agree the powers to enter premises in the Income Tax Law should be aligned with the powers in the GST Law? We welcome views on other aspects of the access powers not specifically addressed here.***

- 6.12. There was a mixed response to the proposal to harmonise the access powers in respect of the Income Tax Law and the GST Law. A majority opposed the proposition.
- 6.13. Concerns centred on fears about sufficient safeguards for taxpayers and their agents being put in place; that access powers would be employed too readily by tax officers; that guidance would not be published; and that a process of redress should be put in place.

**Taxes Office response**

- 6.14. One of the main aims of the Taxes Office transformation programme is to achieve greater public value from tax work by (where practical) undertaking a more holistic approach to tax compliance. This could mean, most notably, undertaking joint audit work relating to company income tax, personal income tax and GST, as well as (potentially) social security contributions. It is highly desirable that all powers available to the Taxes Office can be applied by all of its tax officers across all of the taxes and contributions for which they are responsible.

- 6.15. The lack of symmetry between the access powers of the various tax laws could be a real obstacle to the transformation envisaged and we are minded to continue to recommend harmonisation to Ministers. Issues of guidance; proportionality of officers' behaviour; guidance on policy and scope to appeal are addressed in Section 10.

## 7. Filing due dates

### ***Question 29: Do you agree with the proposed changes to the filing deadlines as shown in Table 6.1? If not, what changes would you propose instead?***

- 7.1. The majority of respondents saw the need for the online filing deadline to be later than the paper filing deadline in order to incentivise online filing.
- 7.2. However there was some concern that taxpayers who have more complex affairs, for example those who claim double tax credit or who receive income from Jersey resident companies, will continue not to be able to make a full and complete return by the proposed due dates. It was suggested that taxpayers with complex affairs should be able to register for a later filing date of 31 December or 31 January.
- 7.3. There was also concern over the misalignment of the filing due date and payment deadline (i.e. surcharge) date for companies. Illogically, the filing due date – midnight on 31 December – is later than the surcharge date, which falls on the first Friday following the first Monday in December.
- 7.4. In addition one respondent queried the need for retaining the deadline of 6pm on the last Friday of a month, and another wanted to keep the July deadline for represented taxpayers making paper returns.

### **Taxes Office response**

- 7.5. It continues to be the Taxes Office's position to provide an extended deadline for taxpayers who choose to file online.
- 7.6. With regard to the issue of those taxpayers who have more complex affairs, it is our view that the problem lies with the current appeals process rather than with the due date. Taxpayers who have double tax credits are not a problem unique to Jersey.
- 7.7. We consider that, where appropriate, taxpayers should be able to submit estimated figures on their tax returns. When they are in possession of the relevant information, taxpayers should be able to log in to the system to make the appropriate amendments. Interest would then be charged on any difference between the original liability and the revised liability.
- 7.8. We do not consider it necessary to have to appeal against an original assessment where estimated figures have been provided. We anticipate a new appeals process to be in place prior to, or concurrently with, the introduction of online filing and assessment (see discussion below on appeals).
- 7.9. Consideration will be given to reviewing the relationship between the filing due date and the payment due date for companies.

- 7.10. With reference to the 6pm on a Friday deadline, we consider this to be necessary for those taxpayers who wish to hand deliver paper tax returns.
- 7.11. Similarly we cannot see any arguable reason for maintaining an extended deadline for agents who wish to file on paper. If additional time is needed to file then the return should be filed online.

## 8. Officers' liability

***Question 30: Do you agree officers of a company should sometimes be personally liable for a company's penalty? If so, under what circumstances? If not, why not?***

- 8.1. This proposal drew a mixed response from respondents. While some were content with the notion of officers' liability, other suggested that care should be taken to outline exactly when and how it would be employed. There were fewer objections if such a power was contemplated only when a person has acted dishonestly.

### Taxes Office response

- 8.2. As proposed in the consultation, it is envisaged that the power to extend a penalty to an officer of a company would be used only in limited circumstances. One of those circumstances is likely to be where the relevant officer has acted dishonestly. The GST Law already provides for a penalty for a corporate offence to be recoverable from a partner, director, manager, or secretary, where it involves dishonesty.<sup>3</sup> It also provides for an offence for officers equivalent to the corporate offence.<sup>4</sup> These provisions are also aligned with Article 41 of the Financial Services (Jersey) Law 1998.
- 8.3. It would be inconsistent for similarly applied sanctions in respect of income tax not to be so recoverable or punishable.

## 9. Appeal rights

***Question 31: Where do you consider there should be safeguards in the taxes laws? We would welcome views under what circumstances you consider taxpayers be allowed to appeal penalties and/or decisions made by the Comptroller, and in what form these appeals should take.***

- 9.1. Unsurprisingly, respondents urged the Taxes Office to build in appropriate safeguards for the taxpayer in respect of all penalties and decisions, including the right of appeal in all circumstances.
- 9.2. Two respondents advised that the matter of appeals be considered in an entirely separate exercise.

### Taxes Office response

- 9.3. Any taxpayer who receives a penalty from the Taxes Office will be able appeal against it.

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<sup>3</sup> GST Law, Article 72

<sup>4</sup> GST Law, Article 92

- 9.4. We expect to provide clear online guidance for taxpayers, explaining what needs to be done in the event they wish to appeal against a penalty.
- 9.5. The existing appeals process was raised by many respondents as an area that requires additional and separate attention. It is therefore our intention to address appeals when examining the administrative provisions of the taxes laws, in preparation for the drafting of a new Revenue Administration Law (see below).

## **10. Other points for discussion**

We are very grateful for respondents taking the time to respond to the individual questions posed in the document.

Inevitably there were a number of issues that respondents wanted to discuss that fell outside the scope of the specific questions. While we have tried to address these points below, there are naturally some topics to which we have so far not given sufficient attention to provide a full response.

### **Revenue Administration Law**

A number of respondents saw the need for a Taxes Management Law or similar. In fact, we are proposing a Revenue Administration Law, to be developed in stages, with the initial stages coming into force in January 2018.

The aim of the Revenue Administration Law is to harmonise as many provisions as possible across all taxes. This will not happen overnight. Due to the complexities involved and the availability of law drafting time we anticipate implementing the law in stages, building it up over time.

Stages one and two will address general administrative provisions (for example the role of the Comptroller), confidentiality and information sharing, and incorrect declarations; further stages will be added each year.

### **Appeals**

The appeals process was highlighted as an issue by various respondents. We hope to address the matter in due course.

It was originally anticipated that one of the stages of the Revenue Administration Law would tackle the appeals process. Discussions are currently underway between the Taxes Office, the Law Draftsman, and the Law Officers' Department to determine whether this is the best legislative approach to improving the appeals process.

It is intended that any new appeals process will address appeals against assessments, penalties, and any other decision made by the Taxes Office. We envisage the role of the Commissioners of Appeal evolving so that contentious cases comprise the majority of hearings.

### **Guidance (including Taxes Office manuals)**

It is the Comptroller's policy that taxpayers and tax officers should rely only on the tax law and on the Comptroller's interpretations of that expressed in public guidance on the Taxes Office website. There is already a significant amount of guidance available to taxpayers online, and the content is expanding each year to support online filing and to help reduce footfall at the Taxes Office helpdesk and levels of telephone enquiries. It is the Comptroller's general policy not to produce or maintain supplementary internal guidance ("tax manuals"), except where absolutely necessary.

### **System-led changes**

A number of respondents thought that the Taxes Office was ‘putting the cart before the horse’ in focusing on modernising these aspects of tax law, rather than other areas, for example of tax policy.

The reason for consulting on these proposals now is that we will shortly be commencing the design and configuration of our new IT system (a significant capital investment and the first major IT investment in the Taxes Office in over 30 years). The areas covered by this consultation exercise will represent important elements of the programming of the new IT system.

The Taxes Office does not intend to recommend to Ministers the introduction of new administrative penalties (registration, filing, and payment) before the introduction of the new IT system, which is likely to provide online filing and assessment for personal taxpayers in 2020 in respect of the tax year of assessment 2019.

## Tables

Table 2.2 (amended)

**Table 2.2 (as amended) – Detailed percentage penalties for an incorrect declaration**

| Behaviour  | Standard penalty | Min. penalty | Voluntary disclosure (minimum penalty) |
|------------|------------------|--------------|--|
| Innocent   | 0%               | 0%           | 0%                                     |
| Careless   | 30%              | 10%          | 0%                                     |
| Deliberate | 100%             | 50%          | 30%                                    |

In addition to the above, in a repeat case a multiplier of 1.5x can be added to the penalty.

A repeat case is one in which a taxpayer has been found to have made a second or further incorrect declaration within five years of making an initial incorrect declaration. The five year period refers to five calendar years.

Table 3.1

**Table 3.1 – Initial penalties for employers filing late ITIS returns, by no. of employees**

| Employer size | No. of employees | Initial penalty |
|---------------|------------------|-----------------|
| Micro         | <5               | 2 PU (£100)     |
| Small         | <20              | 5 PU (£250)     |
| Medium        | <100             | 10 PU (£500)    |
| Large         | 100+             | 20 PU (£1,000)  |

- Level of penalty to be defined in primary law
- Four categories of employer size to be defined by Ministerial Order

Table 3.4

**Table 3.4 – Summary of current and proposed administrative sanctions**

| Failure to register | Current  | Proposed  |
|---------------------|--|---|
| Income tax          | None   | None  |
| ITIS                | Criminal level 3 fine (£10,000)                  | Maintain criminal sanction;<br>New civil penalty - 12 penalty units (£600)  |
| GST                 | Higher of £200, and 10% of GST                   | Maintain criminal sanction;<br>New civil penalty - higher of 12 penalty units (£600), and 10% of GST                            |
| Failure to file     | Current  | Proposed  |
| Income tax          | Criminal sanction;<br>£250 one-off civil penalty | Maintain criminal sanction, but policy to refer more cases to AG;<br>New civil penalty - 6 penalty units (£300) initially; then |

|                       |   |  |
|-----------------------|---|--|
|                       |   | 1 penalty unit (£50) per month thereafter for max. 11 months   |
| <b>ITIS</b>           | Unlimited criminal fine, followed by criminal level 2 fine each day | Maintain criminal sanction;<br>New civil penalty - 6 penalty units (£300) initially;<br>Potential additional monthly penalties         |
| <b>GST</b>            | £50 surcharge   | 12 penalty units (£600) initially, OR initial penalty based on taxable turnover of business;<br>Potential additional monthly penalties |
| <b>Failure to pay</b> | <b>Current</b>  | <b>Proposed</b>  |
| <b>Income tax</b>     | 10% one-off surcharge   | 10% initially<br>5% at 3 and 6 months  |
| <b>ITIS</b>           | Unlimited criminal fine   | 10% initially<br>5% each month thereafter  |
| <b>GST</b>            | 2.5% surcharge  | 10% initially<br>5% at 3 and 6 months  |

Table 6.1

Table 6.1 – Current and future filing dates, for paper and online

|                        | Current                 | Future                  |                      |
|------------------------|-------------------------|-------------------------|----------------------|
|                        |                         | Paper                   | Online               |
| <b>Personal</b>        |                         |                         |                      |
| - <b>Unrepresented</b> | 6pm last Friday in May  | 6pm last Friday in May  | Midnight 31 July     |
| - <b>Represented</b>   | 6pm last Friday in July | 6pm last Friday in May  | Midnight 31 July     |
| <b>Companies</b>       | Midnight 31 December    | 6pm last Friday in July | Midnight 31 December |