

**The implementation of Mandatory  
Disclosure Rules for**

**CRS Avoidance Arrangements**

**and**

**Opaque Offshore Structures**

**Summary of responses to the consultation  
exercise**

## Table of Contents

1. Executive Summary .....	3
2. Introduction .....	3
3. Responses Received .....	4
4. Responses .....	5
<i>Question 1.- Preliminary indications from industry support the Government of Jersey's preferred option to introduce the OECD Model Rules. We would welcome views or general comments on whether this option can be successfully implemented in Jersey ...</i>	<i>5</i>
<i>Question 2. – To what extent is it likely that promoters are operating in Jersey for the purposes of this MDR regime ?.....</i>	<i>6</i>
<i>Question 3. – The Government of Jersey expects that all tax advisers and entities regulated by the JFSC that provide services, should based on the information they could reasonably be expected to hold, be able to identify a Structure or Arrangement for these purposes .....</i>	<i>6</i>
<i>Question 4. - Do you agree that this is a suitable way to provide guidance on these areas? If not, then please indicate what alternative approaches could be taken. [ referencing para 4.1. – 4.8. of the consultation ].....</i>	<i>7</i>
<i>Question 5. – Do you agree that these exclusions are highly unlikely to remove arrangements from disclosure that could be designed to circumvent CRS reporting? [ referencing para 6.2. – 6.6. of the consultation ].....</i>	<i>8</i>
<i>Question 6. – Would it be reasonable to extend these CRS exclusions to any other sets of circumstances without undermining the policy intent of the Model Rules? [ referencing para 6.2. – 6.6. of the consultation ].....</i>	<i>8</i>
<i>Question 7. - Do you agree that these exclusions are highly unlikely to remove structures from disclosure that could be designed to obscure Beneficial Ownership and undermine CRS reporting? [ referencing para 7.1. – 7.3. of the consultation ] .....</i>	<i>9</i>
<i>Question 8. – Would it be reasonable to extend these exclusions to any other sets of circumstances or other specific types of structures? [ referencing para 7.1. – 7.3. of the consultation ].....</i>	<i>10</i>
<i>Question 9. - The Government of Jersey is considering the fullest interpretation, i.e. that it is based on expectations at the time rather than how CRS has developed, would this cause any specific concerns ? [ referencing para 8.1. – 8.3. of the consultation ].....</i>	<i>10</i>
<i>Question 10.- The political commitment given by the Government of Jersey requires MDR legislation to be introduced by 31 December 2019. The Government seeks views on industry's preparedness for making the required MDR disclosures and on the appropriate commencement date for first disclosures. ....</i>	<i>11</i>
<i>Question 11. - Is this the correct penalty regime and do you believe this approach will discourage non-compliance in a balanced way? [ referencing para 10.1. – 10.5. of the consultation ].....</i>	<i>11</i>

*Question 12. - We would invite you to provide any further feedback on the concepts within this consultation.*..... 12

5. Conclusion :..... 13

## 1. Executive Summary

- 1.1 Revenue Jersey consulted between the 23<sup>rd</sup> September and 15<sup>th</sup> November 2019 on the Government of Jersey’s outline proposals as to how it could address commitments made to the EU Code of Conduct Group regarding a Mandatory Disclosure Rules ( MDR ) regime.
- 1.2 This consultation had followed on from an initial meeting with representatives of industry to gauge the potential issues of adopting an MDR regime.
- 1.3 The responses to the consultation supported the general finding from this initial engagement. In particular that for Jersey an MDR regime based on the OECD Model Rules rather than the EU’s DAC6 regime was the correct approach.
- 1.4 The consultation has provided a coherent set of responses which support the current approach, and further areas which Revenue Jersey may want to consider.
- 1.5 The next step will be to take forward these responses, and use them to finalise the drafting of regulations, and in writing guidance.
- 1.6 They will also help our engagement with other jurisdictions particularly Guernsey and the Isle of Man, in the aim of creating a regime which is consistent with others, and gives certainty to those operating across jurisdictions.

## 2. Introduction

- 2.1 On 21 December 2018, the States of Jersey gave a political commitment to the Code Group that it would introduce a mandatory disclosure regime (MDR).

“Jersey will also introduce legislation before 31 December 2019 to implement mandatory disclosure rules aligned to international work on the Common Reporting Standard.”

- 2.2 This commitment was given in response to a June 2018 scoping paper from the Code Group which raised the issue of introducing MDR as a “further transparency measure” for “2.2 jurisdictions” (including Jersey) which were involved in the Code Group’s work on cooperative jurisdictions and economic substance.
- 2.3 On 13 July 2018, the States of Jersey confirmed that they would introduce legislation for a mandatory reporting regime by 31 December 2019. Similar commitments were made by Guernsey and the Isle of Man.
- 2.4 The intention is to implement these commitments in a manner which allows for consistency of treatment across the three Crown Dependencies.
- 2.5 The information reported under the mandatory reporting regime will be exchanged by Revenue Jersey with relevant jurisdictions where Jersey has the legal ability to do so.

### 3. Responses Received

- 3.1 Revenue Jersey received 9 responses;
  - 3 from Associations / Industry Bodies;
  - 6 from interested Corporate Groups; and
  - 0 from individuals in their personal capacity
- 3.2 All respondents engaged in detailed commentary on the specific questions posed in the consultation document with most including a narrative on the outline proposal as a whole.
- 3.3 The responses include input from those engaged in the Trust & Company Service Providers sector, the Funds Management sector, the Banking sector, the Tax and Professional Services firm sector, and the Legal Services sector.

- 3.4 The consultation document can be accessed at <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/C%20Implementation%20of%20Mandatory%20Disclosure%20Rules%20for%20CRS%20Avoidance%20Arrangements%20and%20Opaque%20Offshore%20Structures%2020190923%20SS.pdf>

## 4. Responses

Respondents were generally positive about the approach of the Government of Jersey to the implementation of these rules, particularly given the timescale for the change.

*Question 1 - Preliminary indications from industry support the Government of Jersey's preferred option to introduce the OECD Model Rules. We would welcome views or general comments on whether this option can be successfully implemented in Jersey*

- 4.1 *7 respondents answered this question and there was unanimity that the OECD Model was appropriate for Jersey, and could be successfully implemented.*

4.1.1 *There were other comments which together with Revenue Jersey's responses are as follows;*

4.1.1.1 *That Jersey's MDR regime recognises compliance with the EU's DAC6 regime as being compliant with MDR in Jersey.*

4.1.1.2 *Revenue Jersey considers that whilst DAC6 does cover a similar area to the proposed MDR regime for Jersey, Jersey cannot abdicate its responsibilities, or run a parallel system based on another jurisdiction's rules. However to the extent that the MDR regime recognises in certain circumstances that disclosure under another jurisdiction's MDR regime removes the obligation to make a duplicate disclosure in Jersey ( See Rule 2.5 of the OECD Model Rules ), we intend to recognise DAC6 as an MDR regime.*

4.1.1.3 *That there are a number of regulatory statements and guidance which will be superseded by the proposed Jersey MDR regime and that these should be reviewed and withdrawn where possible.*

*4.1.1.4 Revenue Jersey agrees that once the MDR regime is in place we could withdraw any statements or guidance which are no longer required. Revenue Jersey notes that the statements identified by the respondents were issued by institutions outside the Government of Jersey. Revenue Jersey will need to liaise with the relevant institutions as to if they would consider, in light of the MDR regime, if these statements might be amended or withdrawn.*

*4.1.1.5 One respondent raised a relevant area in considering other questions, which was the overlap of reporting with SARs ( Suspicious Activity Reports ) and whether a SARs report could be deemed to cover reporting under MDR. Revenue Jersey recognise there is potential duplication but do not believe it is appropriate to conflate the two areas as the reports serve different purposes, address different risks and SARs reports have relevance to a wider range of Jersey authorities than just Revenue Jersey.*

*Question 2 – To what extent is it likely that “promoters” are operating in Jersey for the purposes of this MDR regime ?*

*4.2 The respondents were generally unaware of any promoters operating in Jersey.*

*4.2.1 There was a request for further guidance on , for example as to the boundary as to what constituted promotion rather than providing services generally.*

*Question 3. – The Government of Jersey expects that all tax advisers and entities regulated by the JFSC that provide services, should based on the information they could reasonably be expected to hold, be able to identify a Structure or Arrangement for these purposes .*

*a) Is this a reasonable expectation ?*

*b) Are there other service providers operating in Jersey ( whether regulated or non-regulated ) that would also be likely to fall within the scope of MDR. If so, which sectors are these service providers operating within ?*

- 4.3 *Respondents generally were comfortable that these type of entities should be able to identify a Structure or Arrangement based on the information they hold.*
- 4.3.1 *However, respondents wanted to ensure that Revenue Jersey was clear that these entities should not be required to undertake further due diligence work to establish the position in every case. In particular the position of banks were highlighted as examples of service providers who would not be expected to hold information that enabled them to identify a Structure or Arrangement where what they provided was routine transactional services.*
- 4.3.2 *Revenue Jersey fully agrees that service providers should be able to identify, based on the information they are expected to hold, Arrangements or Structures. If the information they hold is not sufficient to do this, then they cannot be expected to identify Structures or Arrangements. However Revenue Jersey does expect that where they do hold information sufficient to identify a Structure or Arrangement that they have the processes and knowledge to ensure they are identified. Revenue Jersey also expects that service providers will not change processes to ensure they do not obtain the types of information that might identify such Arrangements and Structures, particularly where normal commercial practices would indicate they should do.*
- 4.3.3 *Some respondents identified that individual trustees, and family offices might under some circumstance be service providers for the purposes of the MDR regime and required to make disclosures.*
- 4.3.4 *Revenue Jersey will consider how it can engage with these two categories of potential service providers.*

*Question 4. - Do you agree that this is a suitable way to provide guidance on these areas? If not, then please indicate what alternative approaches could be taken. [ referencing para 4.1. – 4.8. of the consultation ]*

- 4.4 *Respondents generally welcomed the approach as a suitable way to provide guidance.*
- 4.4.1 *Respondents requested that the final guidance was clear and contained examples, in particular both examples of what should be disclosed as well as those areas identified in the consultation where disclosure is not required. The respondents also requested that the guidance be comprehensive and issued on a timely basis.*

*4.4.2 Revenue Jersey will use best endeavours to produce guidance as suggested. However, given that this is a developing area of international practice, there may be some areas where there is not a settled position at the time the initial guidance is issued. This is a practical problem that has arisen in other contexts, and there is a risk around MDR that guidance will have to be issued to allow industry to prepare, but with placeholders. Revenue Jersey will strive to avoid this but it is not always possible.*

*Question 5. – Do you agree that these exclusions are highly unlikely to remove arrangements from disclosure that could be designed to circumvent CRS reporting? [referencing para 6.2. – 6.6. of the consultation ]*

*5.5 This question referred to the suggested scenarios that would not be considered disclosable Arrangements under MDR. Respondents agreed that the scenarios suggested were unlikely to remove Arrangements that were designed to circumvent CRS reporting.*

*5.5.1 Some respondents highlighted areas in the scenarios where supporting guidance will need to clarify the exact scope of some of the terms.*

*5.5.2 One respondent requested further guidance on scenarios involving transactions with the United States of America. Revenue Jersey will consider if specific examples involving the USA are necessary.*

*5.5.3 A further respondent requested clarity if they came across Arrangements to avoid reporting under FATCA and whether the MDR rules extended to FATCA. Revenue Jersey is clear that the proposed regime is centred on CRS reporting. This is not to say that service providers cannot raise concerns with Revenue Jersey if they come across Arrangements designed to circumvent FATCA reporting.*

*Question 6. – Would it be reasonable to extend these CRS exclusions to any other sets of circumstances without undermining the policy intent of the Model Rules? [referencing para 6.2. – 6.6. of the consultation]*



*6.6 This question followed on from question 5, and asked for suggestion as to if those scenarios might be expanded.*

*6.6.1 One respondent suggested that the transfer of administration between the offices of a regulated service provider might result in non-reporting but that this would be highly unlikely to be to avoid CRS reporting requirements. Revenue Jersey doesn't believe at his time it should exclude this situation on a blanket basis, but the service provider will have all the details to quite firmly come to a reasonable conclusion that the Arrangement was not designed to circumvent the CRS regulations, if that was the appropriate conclusion.*

*6.6.2 Some respondents suggested that a failure or error by another institution could be seen as a CRS Arrangement, and that if this was corrected in a reasonable time frame this should be excluded. Revenue Jersey has not included this scenario as it cannot see how this situation arises in the case of a service provider.*

*6.6.3 Respondents also suggested that the exclusions based on a £10,000 threshold could be higher, particularly if the expectation was that smaller amounts would be aggregated. Revenue Jersey will keep this under consideration.*

*Question 7. - Do you agree that these exclusions are highly unlikely to remove structures from disclosure that could be designed to obscure Beneficial Ownership and undermine CRS reporting? [ referencing para 7.1. – 7.3. of the consultation ]*

*6.7 All respondent agreed that the scenarios described in relation to Structures were highly unlikely to remove those designed to obscure beneficial ownership.*

*6.7.1 Some respondents stressed that the regulated Trust Company businesses would maintain records of Beneficial Ownership for all administered companies both Jersey and non Jersey incorporated. Whilst Revenue Jersey acknowledges this is the case, as it will be clear to all service providers through records of the Company Registry, if a company is a Jersey incorporated*

*company, the proposed scenario is limited to Jersey incorporated companies.*

*Question 8. – Would it be reasonable to extend these exclusions to any other sets of circumstances or other specific types of structures? [ referencing para 7.1. – 7.3. of the consultation ]*

*6.8 Some respondents queried whether the exclusions should be extended to entities administered in other jurisdictions by regulated entities where their regulation and anti money laundering rules are equivalent to Jersey. Whilst Revenue Jersey understands this request, it presents difficulties in that the Government of Jersey and Jersey regulators are only in a position to ensure the integrity of our institutions and their compliance with requirements. We are unable to exert influence in other jurisdiction and maybe unaware of any underlying issues or problems in such jurisdictions.*

*6.8.1 Some respondents suggested that the exclusion for those entities subject to economic substance should be expanded to cover entities in any jurisdiction where there is an economic substance law approved by the OECD / FHTP, others that it should be limited to for instance Guernsey. For similar reasons, in relation to the inability to influence how any such economic substance law is monitored and the level of compliance activity associated with it, Revenue Jersey sees difficulties in agreeing to such an extension, particularly if it was to the widest extent.*

*Question 9. - The Government of Jersey is considering the fullest interpretation, i.e. that it is based on expectations at the time rather than how CRS has developed. Would this cause any specific concerns? [ referencing para 8.1. – 8.3. of the consultation ]*

*6.9 This question relates to the look back provision for promoters of Arrangements, and was not answered by some respondents as they were not promoters and did not represent promoters.*

*6.9.1 Of those who did respond, the majority thought the fullest interpretation should be used. There was one respondent who cautioned that this created a further burden for entities regarded as promoters.*

*6.9.2 Revenue Jersey will consider the point further, although it does not see this to be a major issue for Jersey given the answers to question 2.*

*Question 10 - The political commitment given by the Government of Jersey requires MDR legislation to be introduced by 31 December 2019. The Government seeks views on industry's preparedness for making the required MDR disclosures and on the appropriate commencement date for first disclosures.*

*6.10 The respondents were unanimous that although the legislation may be introduced by the end of 2019, that they would require a period of time to review the legislation and accompanying guidance, and establish their systems and processes.*

*6.10.1 Periods of between 6 and 12 months were proposed, and reference was made to the fact DAC6 in EU Member States is not effective until the 1<sup>st</sup> July 2020.*

*6.10.2 Some respondents raised concerns that a simple six month period could impact on workloads, as it would impact on the CRS and FATCA reporting deadlines which are the 30 June 2020.*

*6.10.3 Revenue Jersey will take these concerns into consideration.*

*Question 11. - Is this the correct penalty regime and do you believe this approach will discourage non-compliance in a balanced way? [referencing para 10.1. – 10.5. of the consultation ]*

*6.11 Respondents agreed that in Jersey's context monetary penalties should prove effective.*

*6.11.1 Some respondents clarified that they expected that Revenue Jersey would be able to act in a proportionate way, and that the penalty would be capable of being mitigated, including in circumstances where there was a genuine and documented reason why a service provider did not think disclosure was necessary to nil.*

*6.11.2 Revenue Jersey can agree that any penalty provision should be capable of mitigation, and that the full circumstances would be considered. Although on the specific scenario Revenue Jersey would stress that in any circumstances which are borderline, they*

*would expect a service provider to seek advice including in some instances from Revenue Jersey.*

*Question 12. - We would invite you to provide any further feedback on the concepts within this consultation.*

*6.12 Respondents raised a number of areas :*

*6.12.1 - In relation to there not being an obligation to disclose where a service provider has already disclosed information under MDR, what would Revenue Jersey expect to see as documentation.*

*6.12.2 Revenue Jersey cannot prescribe the exact documentation not least because the disclosure may have been made overseas. However any documentation should include who made the disclosure, to whom and when, including any reference given, and confirm that the details disclosed were equivalent to those required in Jersey.*

*6.12.3 The expectation is this easement will be of particular use to groups. Also where a suite of advisers in Jersey is used and this becomes part of the contractual responsibility of one adviser to consider, disclose where necessary and share that disclosure with the other advisers.*

*6.12.4 – A request for clarity on the interaction of the MDR with the CRS anti avoidance rules.*

*6.12.5 - A request for a full program of engagement with service providers*

*6.12.6 – The statement that the interaction with Legal Privilege will need to be discussed.*

*6.12.7 – Requests for clarity that opaque structures are considered only to the extent they are designed to be opaque to the authorities, particularly the tax authorities. That there is no intention to consider situations if they are only opaque to the public for reasons of privacy.*

*6.12.8 – Requests for clarity on the reporting requirements where an entity may be concerned with the authorities in two jurisdictions,*

*e.g. a branch of a company in a different jurisdiction to the jurisdiction of residence of the company as a whole.*

## 7 Conclusion :

*7.6 The consultation has provided assurance in a number of key areas that the approach the Government of Jersey, and in particular Revenue Jersey, planned to take is the right approach for Jersey.*

*7.7 The respondents clearly agreed that the Government of Jersey's preferred option of following the OECD Model Rules is the correct approach for Jersey.*

*7.8 The responses confirmed Revenue Jersey's understanding that the promoters of products to circumvent the Common Reporting Standard, are not a part of Jersey's adviser ecosystem.*

*7.9 The respondents clearly agreed that the approach of Revenue Jersey to produce guidance was the correct approach. In particular emphasised not only what should be disclosed but gave clear scenarios of what need not be disclosed as well as what does.*

*7.10 The respondents agreed that a monetary penalty element to enforcing the regime should be sufficient.*

*7.11 The respondents gave a number of areas, examples and instances, where Revenue Jersey can clarify positions when drafting the regulations and the guidance implementing MDR, consider potentially further exemption scenarios, and consider as it determines when disclosures will need to start being made from.*

*7.12 Revenue Jersey will continue to develop the MDR regime, and will take into account all the feedback received.*