

# Code of Practice on Revenue Jersey compliance interventions

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v1.0

The information in this document is provided as a guide only. It is not professional nor legal advice and should not be considered exhaustive.

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# 1 Introduction

## 1.1 Purpose of this Code of Practice

The purpose of this Code of Practice is to set out clear guidelines for Revenue Jersey compliance interventions, having regard to best practice and legislation.

The Code of Practice does not restrict a taxpayer's statutory rights in any way. However, taxpayers and advisers who are acting on their behalf cannot abuse the rights recognised in the Code of Practice in order to avoid or delay payment of tax, interest or penalties which are correctly owed.

The Code of Practice will be reviewed on an on-going basis and may be modified to reflect changes in legislation and emerging practices.

## 1.2 Taxes covered by this Code of Practice

The Code of Practice applies to income tax (including LTC and ITIS), social security contributions, goods and services tax (GST), and land transaction tax (LTT). It also covers interest, surcharges, and penalties in respect of those revenue types, where applicable.

In the coming years, Revenue Jersey's responsibility for the collection of States' revenues may be extended to cover Customs Duties. At such time, this Code of Practice will apply equally to those duties.

## 1.3 Terminology

References made in this Code of Practice to a 'taxpayer' apply to the entity or person (natural or otherwise) who is subject to a compliance intervention, or interacting with Revenue Jersey. In some instances these 'taxpayers' do not pay tax because they are not liable or chargeable, and sometimes they are subject to tax at 0%.

## 1.4 Promoting voluntary compliance

Revenue Jersey is committed to helping taxpayers to get their tax affairs right first time. It is far more effective to inform and engage early with taxpayers, assisting them with their tax obligations and promoting voluntary compliance, rather than acting to rectify mistakes at a later date.

It is Revenue Jersey's policy to encourage those who believe they have made a mistake to make contact as soon as possible and, if needed, to make a disclosure. In the event that penalties should arise from a mistake, credit will be given in the calculation of those penalties to a taxpayer has made a disclosure.

In order to protect the vast majority of Jersey taxpayers who want to comply with their tax obligations, Revenue Jersey will pursue vigorously those who do not. This is done mainly through Revenue Jersey compliance interventions but in limited serious cases, investigations of a taxpayer may be necessary with a view to criminal prosecution. Revenue Jersey will increasingly challenge aggressive tax avoidance schemes and

the unintended use of legislation which threaten tax yields and the perceived fairness of the tax system for Islanders in general.

### 1.5 Tackling non-compliance

Revenue Jersey carries out a programme of compliance interventions that aims to minimise the burden on the compliant taxpayer and tackle the non-compliant taxpayer in a thorough and effective way. This approach takes account of the risks that apply to a taxpayer across all taxes. Revenue Jersey's priority is to recover any unpaid tax along with interest and penalties (where applicable) as efficiently as possible and address any wider issues from the provision of inaccurate information.

### 1.6 European Taxpayers' Code

Revenue Jersey will be adopting the [European Taxpayers' Code](#), which sets out the fundamental elements of service that taxpayers are entitled to and sets out Revenue Jersey's expectation of taxpayers.

### 1.7 Respective roles and responsibilities in relation to compliance interventions

Revenue Jersey compliance interventions can be a burden on taxpayers and may cause some disruption to their business. It is, therefore, essential that all compliance interventions are conducted in an efficient, professional and courteous manner.

### 1.8 Revenue Jersey staff

Revenue Jersey will provide any appropriate assistance required by taxpayers to enable them to cooperate with a compliance intervention.

Compliance interventions will be well-planned, appropriately scoped, effectively conducted and carried out in a timely manner by Revenue Jersey officers. Legislation and operational policy will be applied in conjunction with this Code of Practice. The objective of a compliance intervention is to examine the risk identified in a timely manner with the least amount of disruption for the taxpayer.

### 1.9 Taxpayers

A taxpayer is responsible for the accuracy of their tax return, regardless of whether the return is prepared and submitted by the taxpayer or by an adviser acting on the taxpayer's behalf.

### 1.10 Tax advisers

Revenue Jersey recognises the important role that tax advisers play in assisting taxpayers with filing requirements, interpretation of legislation and other related matters, and in facilitating tax compliance. Revenue Jersey also recognises the professional standards and Codes of Ethics that the majority of tax advisers adhere to.

In the interests of effective tax administration, compliance interventions should be finalised as quickly as possible. Revenue Jersey expects that information requested from taxpayers or their agents will be supplied in a timely manner. Where this does not happen, for example if records are only partially supplied or there are delays by the taxpayer or adviser in answering queries, Revenue Jersey will notify the taxpayer and the relevant tax adviser that continued failure to cooperate may have an impact on any penalty that is ultimately due.

Revenue Jersey expects that all tax advisers preparing tax returns and representing taxpayers act honestly and comply with relevant laws and regulations. According to law, “any person who aids, abets, counsels or procures the commission of an offence” will also be guilty of an offence and liable in the same manner as the principal offender to the relevant penalty.<sup>1</sup>

Revenue Jersey also expects that any tax adviser acting on behalf of a taxpayer will provide information and material which to the best of his or her knowledge is a true representation of a taxpayer’s tax affairs. Where an incorrect return is filed or inaccurate information is provided due to the actions of a tax adviser, Revenue Jersey will pursue the taxpayer for tax, interest and penalties as appropriate.

In the unlikely event that Revenue Jersey consistently encounters a pattern of poor quality work from a particular tax adviser, Revenue Jersey will take this into account in risk assessing the clients of that adviser and may ultimately consider withdrawing the adviser’s approval to act as a tax agent.

In future, it is possible that Revenue Jersey will stop the process of authorising tax agents and in exceptional cases of continued poor quality work from an adviser, may cease to deal with that adviser. Any such decision would be well signalled to the adviser in advance and the adviser would have the option of having this decision judicially reviewed.

### 1.11 Operation of this Code of Practice

This Code of Practice will come into effect from 1 April 2021 regarding all compliance interventions that are notified on or after that day. This Code of Practice does not cover compliance interventions commenced before that date.

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<sup>1</sup> Income Tax Law, Article 137(4); GST Law, Article 92

## 2 Overview of Revenue Jersey interventions

Revenue Jersey is entitled to make the interventions and take the actions it considers necessary to satisfy itself about the accuracy of any document or information provided by a taxpayer.

### 2.1 Objective of Revenue Jersey interventions

The primary objective of compliance interventions is to promote voluntary compliance by the taxpayer with their tax obligations. Intervention programmes are mainly concerned with detecting and deterring non-compliance. Interventions are carried out by Revenue Jersey for a number of reasons, such as to:

- Determine the accuracy of a return, or a claim to repayment;
- Highlight and appraise risk areas of concern to Revenue Jersey and request taxpayers (and/or advisers) to review and examine these specific risks/issues;
- Identify additional liabilities or other matters requiring adjustments, if any;
- Collect the tax, interest, surcharges and penalties, where appropriate;
- Specify remedial action required to put taxpayers on a compliant footing where errors or irregularities are discovered during the course of a Revenue Jersey intervention;
- Consider what procedural or other changes are necessary to eradicate evasion activities; or
- Refer cases to the Attorney General to evaluate suitability for prosecution, where strong indications of serious tax evasion or an offence have emerged.

### 2.2 Selection of taxpayers for compliance intervention

Revenue Jersey reserves the right to conduct a compliance intervention into the taxation affairs of any taxpayer, for any reason, and at any time within the timeframes set out in law. A small proportion of taxpayers may be randomly selected for a compliance intervention each year. In general, however, taxpayers are selected based on Revenue Jersey's risk assessment processes, using all information and intelligence available to them. This includes data received from other jurisdictions under the terms of Jersey's international tax agreements.

While Revenue Jersey continues to build its own compliance data unique to the Island, reliance will be placed on international examples of known risks and models. Revenue Jersey also works closely with other Government departments and agencies and is making increased use of shared facilities for data exchange with them.

Revenue Jersey's compliance strategy also includes the examination of specific business sectors each year. Often, Revenue Jersey will have gathered intelligence

about a sector in advance from a number of sources. This may include results from other interventions in the sector, from known compliance issues in that sector, from local knowledge, or from information gained from third parties, including suppliers. The key risk features are identified and lessons from selected cases are applied to the sector as a whole, focusing on those taxpayers that display the highest risk features.

In order to provide full transparency about its compliance programme, Revenue Jersey publishes details of that programme early on each year.

### 2.3 What may happen during a compliance intervention

Revenue Jersey believes that the best strategy for tackling non-compliant behaviour is to engage early with taxpayers and to assist them in meeting their tax obligations and regularising their affairs. Where Revenue Jersey considers that a compliance intervention is necessary to achieve this objective, it will be carried out.

The type of compliance intervention undertaken will vary depending on Revenue Jersey's risk analysis of the taxpayer. The risk analysis may direct the focus of the intervention on one particular taxpayer, business or sector. It may indicate that only one area of taxation needs to be examined or that a Revenue Jersey intervention is required across all tax heads.

Most compliance checks will be desk based. However, in some cases it will be more appropriate to visit the taxpayer's premises in order to carry out the intervention, known as [on-site visits](#).

In certain cases where Revenue Jersey has concerns about activity in the shadow economy, it may be necessary to make [unannounced visits](#) to taxpayers.

In cases of suspected serious tax evasion or aggressive tax avoidance which places the Exchequer at risk, Revenue Jersey will carry out a tax investigation which may result in [criminal prosecution](#).

### 2.4 Joint activities

Over time, Revenue Jersey intends to expand its capability to conduct joint activities with other Government departments and agencies. Some officers from the Social Security Contributions team moved to Revenue Jersey in 2019/2020 and a joint approach to compliance interventions will be taken as soon as the related compliance powers are available to the Comptroller. Revenue Jersey also plans to undertake work alongside Customs colleagues in future.

### 2.5 Unannounced visits

Generally taxpayers will be notified in advance if a compliance visit is taking place. However, Revenue Jersey reserves the right to call to a taxpayer's business without a prior appointment in cases involving suspected shadow economy activity or where a taxpayer has persistently refused to engage via other communications. Revenue Jersey is conscious of the possible disruption to a business from such a visit; both the

Income Tax Law and the GST Law state that visits to business premises must take place at a “reasonable hour”.<sup>2</sup>

On arrival at a business premises, the Revenue Jersey officer will present his/her identification and explain the nature of the intervention and the purpose of the visit. The officer will seek to speak to the owner or manager of the business, where available. Documents and records may be copied during these visits and further action may be taken as appropriate, depending on the circumstances encountered in each case.

Provided the unannounced visit does not form part of a Revenue Jersey investigation, a taxpayer may take the opportunity to make a voluntary disclosure if they wish.

## 2.6 Types of interventions

The vast majority of interventions will be straightforward checks of a taxpayer’s position, for example a request for a document to support a claim or statement made in a return. These are known as **compliance checks**.

Certain cases may require **enhanced compliance checks** which might involve a more in-depth examination of the taxpayer’s books, records and other tax information.

**Tax investigations** will be carried out when Revenue Jersey believes that serious tax evasion or aggressive tax avoidance has taken place or that an offence has been committed under the revenue laws. In some cases, investigations might commence with a view to prosecuting a taxpayer in court, although a final decision on prosecution is always made by the Attorney General.

The approach to each compliance check will take account of the efficient use of Revenue Jersey time and resources (while addressing the perceived risk) and will also take account of the compliance cost for the taxpayer.

Compliance checks may take the form of any of the following non-exhaustive list of Revenue Jersey activities:

- Routine enquiries
- Pursuit of returns from non-filers
- Sectoral reviews (review of specific trades, professions or economic sectors)
- Enhanced checks (desk and onsite)
- Unannounced visits
- On site visits involving other agencies and including social security contributions (and customs duties in future)

The function of a compliance check is generally to:

- make any necessary adjustments, including under the wider functions of Revenue Jersey (for example, economic substance)

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<sup>2</sup> Income Tax Law, Article 141B; GST Law, Schedule 8

- settle and collect additional tax if any, together with related interest and penalties, and
- specify the remedial actions required to put the tax affairs of the taxpayer on a sound footing for the future.

Interventions generally focus on a year or period where a specific risk has been identified. However, multi-year (or multi-period) compliance interventions may be carried out where material risks are identified for a number of years (or periods).

Provided a taxpayer is not under [investigation](#) by Revenue Jersey, that taxpayer will be entitled to make a [voluntary disclosure](#) about an irregularity in their tax affairs, if the disclosure:

- Is unprompted i.e. Revenue Jersey has made no contact with the taxpayer to indicate that they will be undertaking a compliance check;
- Is made in response to a general sectoral review by Revenue Jersey; or
- Has been prompted by the notification of a compliance check from Revenue Jersey but that notification does not specifically deal with the matter being disclosed.

If a compliance check establishes issues that warrant an investigation, the taxpayer will be notified in writing of this fact and any voluntary disclosures made after that point are not likely to benefit from reduced penalties.

## 2.7 Compliance checks

Compliance checks are carried out by Revenue Jersey to test a compliance issue. The contact may be by telephone, email, letter, or in person. Depending on the circumstances, they may take the form of an informal request for information or a formal information production notice (see Section 4).

When a compliance check is carried out, the taxpayer will be notified by Revenue Jersey of the specific risk(s) and period(s) being checked, to minimise unnecessary costs to taxpayers and Revenue Jersey. These compliance checks do not restrict a taxpayer's right to make a voluntary disclosure.

Compliance checks might be based on some apparent discrepancy in data held by Revenue Jersey on a particular taxpayer's record. They can also result from checks on a claim for repayment or relief. Straightforward compliance checks are used by Revenue Jersey to try and deal with issues and queries they may have without the expense and inconvenience of an enhanced check.

Taxpayers are advised to reply to these straightforward compliance checks, fully, quickly, and honestly. If Revenue Jersey makes an informal request for taxpayer information as part of these checks, the taxpayer will generally be given a minimum of 30 days' notice to produce the documents, accounts or other information that are required. Further detail on Revenue Jersey's information production powers are contained in Section 4.

### Notification of a compliance check

Compliance checks are conducted by telephone, secure-email, letter or visit. A written notification is not always issued. Where an onsite visit is scheduled, the taxpayer (and adviser) will receive a notification.

## 2.8 Enhanced compliance checks

In more complex cases and in cases where tax returns have not been submitted, Revenue Jersey may need to carry out a more detailed examination of:

- the compliance of a taxpayer with the revenue laws;
- any tax returns submitted (including income tax, GST, and LTT); or
- any other declaration or claim made (e.g. an ITIS return or repayment claim).

Revenue Jersey may examine all the risks in a particular case or they may focus in detail on a single issue. Again, the examination may be conducted remotely, via correspondence or it may involve an onsite visit.

The taxpayer's books, records and compliance with tax obligations are likely to be examined, so as to establish the correct level of liability. Regardless of whether it is an examination of an individual or business, this may involve a review of personal finances – usually involving a request to see bank and credit card statements, and any other financial papers. The examination may also involve the collection of arrears of tax with a view to bringing the taxpayer's compliance record up to date.

An enhanced check may be carried out by an individual Revenue Jersey officer or by a team of officers depending on the size and complexity of the case.

### Notice of an enhanced check

Where an enhanced check involves an onsite visit to business premises, a minimum two week notice period will be given to both the taxpayer and his/her adviser. If it is not possible to schedule the visit for that date, the taxpayer or adviser should immediately contact Revenue Jersey to seek an early alternative date.

The notification letters will generally indicate:

1. The tax(es) being examined;
2. The period covered by the examination. In general, the check will be for one year but if issues or further risks are uncovered by Revenue Jersey after examining one year, the period of examination will be extended; and
3. The focus of the risk being examined.

The taxpayer retains the right to make a disclosure on any matter that is not specifically set out for examination in the notification letter.

## 2.9 Timeframe for concluding interventions

It is in everybody's interest that a Revenue Jersey compliance intervention is concluded as quickly as possible. Therefore the following procedures will apply to bring closure and resolution to cases other than investigations.

Where the taxpayer has dealt with all outstanding queries within a reasonable period of time and had no communication from Revenue Jersey for a period of 3 months, the taxpayer or adviser can request the Comptroller to close the intervention.

The same standards of timely response are expected by Revenue Jersey from taxpayers. If taxpayers do not respond to Revenue Jersey queries within a similar timeframe, this will indicate a lack of cooperation by the taxpayer and will have an impact on any penalty mitigation.

## 2.10 Definition of an investigation

An investigation is an examination of a taxpayer's affairs where Revenue Jersey believes that serious tax evasion or aggressive tax avoidance may have occurred or that an offence may have been committed. A tax investigation may lead to criminal prosecution of the taxpayer.

Revenue Jersey will generally initiate a tax investigation by advising the taxpayer in writing that his or her tax affairs are under investigation. There are also situations where an investigation is regarded as on-going without formal notification to the taxpayer. Such situations include an investigation into matters that:

- have become known, or are about to become known to Revenue Jersey through their own investigations or through an investigation conducted by a statutory body or agency;
- are within the scope of an enquiry that is being carried out wholly or partly in public; or
- are within the scope of an enquiry to which a taxpayer is linked, or about to be linked, publicly.

A taxpayer/business should expect us to seek a review of personal finances, usually asking for bank and credit card statements and any other financial papers when a full investigation is undertaken.

A taxpayer who receives notice of an investigation **will no longer be able to benefit from:**

- Reductions in penalties for making a [voluntary disclosure](#) regarding the matter under investigation; or
- Assurance from Revenue Jersey that the case will not be investigated with a view to referral for criminal prosecution.

Where, in the course of a compliance check, an officer encounters information not previously disclosed by the taxpayer, suggesting serious tax evasion or that an offence may have occurred, Revenue Jersey will inform the taxpayer by letter as to

whether a criminal prosecution will be considered. The final decision in relation to any criminal investigation rests with the Attorney General.

### 2.11 Notice of an investigation

The investigation notification letter issued by Revenue Jersey will outline the specific period and the matter initially being investigated, and the action required from the taxpayer based on the information that Revenue Jersey possesses.

The specified period outlined in the investigation notification will not preclude Revenue Jersey from extending the period of the investigation if further relevant information emerges.

Once a notice of investigation has been issued<sup>3</sup> to the taxpayer or adviser or once an investigation has commenced where notification is not issued, reductions in penalties for making a voluntary disclosure will not be available.

### 2.12 Time limits for amending assessments

**Note: As at 1 April 2021, this paragraph is not in force. The Minister proposes to bring forward legislation regarding time limits so that it comes into force during 2021.**

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<sup>3</sup> As determined by the date shown on the Revenue Jersey notification letter

## 3 Regularising tax defaults

The opportunities outlined in this section for regularising tax defaults are generally available to taxpayers irrespective of the type of compliance intervention undertaken by Revenue Jersey. There are some conditions, exceptions and exclusions but these are outlined at the relevant paragraph. In particular, where an investigation has started, the taxpayer is excluded from making a voluntary disclosure regarding the matter under investigation.

### 3.1 Correcting innocent errors

Revenue Jersey recognises that mistakes can happen and that penalties are not always the most appropriate way of dealing with an inaccurate declaration. If a taxpayer discovers an error after submission of a return, taxpayers are encouraged to:

- Notify Revenue Jersey in writing at the earliest opportunity;
- Outline and explain the error in appropriate detail; and
- Promptly pay any resulting shortfall

Taxpayers who have taken [reasonable care](#) with their original submission and who make an innocent error will not be subject to a penalty.

### 3.2 Voluntary disclosures

As with most tax administrations around the world, it is Revenue Jersey policy to encourage taxpayers to make voluntary disclosures in connection with their tax affairs, where they become aware of an irregularity. For this reason, the penalties for a voluntary disclosure are lower than those that apply if Revenue Jersey uncovers the irregularity themselves.

Provided a taxpayer is not under [investigation](#) by Revenue Jersey, that taxpayer will be entitled to make a voluntary disclosure about an irregularity in their tax affairs if the disclosure:

- is unprompted i.e. Revenue Jersey has made no contact with the taxpayer to indicate that they will be undertaking a compliance check;
- is made in response to a general sectoral review by Revenue Jersey; or
- has been prompted by the notification of a compliance check from Revenue Jersey but that notification does not specifically deal with the matter being disclosed (see [Example 1](#) provided in Appendix 1).

A taxpayer is not entitled to a reduction for a voluntary disclosure if Revenue Jersey has received information from a third country that would, if reviewed, lead to the discovery of the inaccurate declaration.

### 3.2.1 Conditions of voluntary disclosure

Voluntary disclosures can be made on the Government of Jersey website at [Voluntary disclosure: putting your taxes right](#). They must represent a [full and complete disclosure](#) made on the online voluntary disclosure form.

Even if a voluntary disclosure is not permitted based on the conditions set out on the Revenue Jersey website, a taxpayer may still take steps to reduce their penalty by proactively disclosing information during any examination of their affairs – see the section on [reducing the penalty](#).

A taxpayer may not be entitled to make a voluntary disclosure if they have previously signed a ‘certificate of full disclosure’. If a taxpayer has signed a certificate of full disclosure, and they make a voluntary disclosure in respect of any of the years covered by that certificate, a reduction for the voluntary disclosure will not be available.

### 3.2.2 Full and complete disclosure

When completing the online voluntary disclosure form, a taxpayer is expected to make a full and complete disclosure of all the facts that have a bearing on a taxpayer’s liability to tax. Revenue Jersey should be able to calculate the correct tax liability by reference to the information provided. The fact that Revenue Jersey may seek clarification if they are unclear about one or more aspects of the disclosure does not necessarily impact the legitimacy of a voluntary disclosure. Ordinarily, Revenue Jersey will accept a voluntary disclosure at face value.

Conversely, a taxpayer who makes an incomplete or piecemeal disclosure should not be entitled to the reductions available for voluntary disclosures. [Example 2](#) is provided in Appendix 1.

### 3.2.3 Calculating penalties for voluntary disclosures

The method for calculating penalties in cases involving a voluntary disclosure is the same as the method in all other cases. However, the minimum penalty for careless and deliberate behaviour is reduced by a voluntary disclosure as set out below:

Behaviour	Minimum penalty	Minimum (with voluntary disclosure)
Careless	10%	0%
Deliberate	50%	30%

### 3.3 Error or mistake – excessive tax

Article 38 of the Income Tax Law allows a claim to be made in respect of excessive tax borne by a taxpayer “by reason of some error or mistake in a return made by the person or on his or her behalf”. The time limit for making a claim is 5 years after the year of assessment.

# 4 On-site Revenue Jersey interventions

## 4.1 Location and expected attendees

Unless otherwise warranted, an on-site Revenue Jersey intervention is carried out at the taxpayer's business premises. The taxpayer is expected to attend. Where there are a number of businesses or locations, the Revenue Jersey intervention is undertaken at the principal place of business. As part of the intervention process, Revenue Jersey may visit some or all of the locations where the business is carried on.<sup>4</sup>

"Business premises" means premises used in connection with the carrying on of a business, trade, profession or vocation.<sup>5</sup> Although this means Revenue Jersey may access a taxpayer's private residence, it is normal practice to require the books and records to be provided to the Revenue Jersey offices in these cases.

Revenue Jersey interventions are not normally conducted at a tax adviser's office. If the relevant information is kept at the office of the adviser, arrangements should be made to make them available at the taxpayer's business premises before the visit.

In circumstances where the carrying out of a Revenue Jersey intervention in the taxpayer's premises would be impractical or would cause serious inconvenience to the taxpayer, Revenue Jersey will carry out the examination in the Revenue Jersey offices.

## 4.2 Conduct of an on-site Revenue Jersey intervention

On arrival, the Revenue Jersey officer will show his or her identification and authorisation and explain to the taxpayer or representative the purpose of the intervention. It is policy not to disclose the precise reason (or reasons) for selecting a particular case for an intervention.

The taxpayer will be offered a final opportunity to make a voluntary disclosure before examination begins.

During the visit, Revenue Jersey will usually:

- Ascertain the nature of the business;
- Identify those responsible for maintenance of the records and list the records kept;
- Examine the books and records, in whatever format held, both for completeness and for the treatment of transactions having regard to tax and accounting principles;

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<sup>4</sup> GST Law, Schedule 8 – "premises" includes a vessel, vehicle, aircraft or hovercraft

<sup>5</sup> Income Tax Law, Article 141A

- Check that all relevant returns have been made and are complete in accordance with the records;
- Make whatever enquiries are necessary for the intervention;
- Advise the taxpayer of any errors, omissions or irregularities in the tax returns submitted (including those in the taxpayer's favour);
- Determine the liability if it arises; and
- Request settlement and specify any action that may be required to place the taxpayer on a compliant footing.

Revenue Jersey makes every effort not to retain any records submitted to the office or collected from the taxpayer for more than one month. If more time is required to finalise enquiries, Revenue Jersey will advise the taxpayer and the adviser to that effect.

Where an intervention requires transfer of electronic data from a taxpayer's computer systems to Revenue Jersey, the taxpayer or their information technology supplier/representative/adviser will be required to provide the necessary data downloads.

Revenue Jersey is not permitted to operate the taxpayer's computer system. However, the data requested may be transferred to Revenue Jersey encrypted storage devices.

Revenue Jersey's data security guidelines will apply to all records extracted in the course of a Revenue Jersey intervention. In particular, data will only be stored on laptops or portable storage devices in encrypted form. The taxpayer is given a receipt for records taken from the premises.

When records have been removed and the taxpayer requires them for current trading purposes, copies of the records removed are given to the taxpayer or, if required, the taxpayer is given an opportunity to take extracts from the records taken.

### 4.3 Materiality

The objective of Revenue Jersey's compliance programme is to improve voluntary compliance. If it becomes clear at an early stage in an intervention that the taxpayer's returns are materially correct, Revenue Jersey will close the enquiry.

Where it is clear that a taxpayer has sought to comply to the best of their ability when completing their tax returns for the various taxes, adjustments are not made for small inaccuracies (on the basis that these may be attributed to innocent errors and may otherwise be balanced by minor errors in Revenue Jersey's favour). Materiality, therefore, is always a factor in assessing the significance of an error or omission.

Materiality is a matter for sensible judgment by Revenue Jersey.

### 4.4 Obstruction

It is policy for Revenue Jersey officers to introduce themselves at the start of an on-site intervention and produce their official authorisation. Officers will also explain the

purpose of the visit. If the taxpayer refuses to facilitate the enquiry or refuses to produce the requested information in an acceptable format, the taxpayer will be regarded as obstructing the intervention process.

In such circumstances Revenue Jersey will try to obtain cooperation from the taxpayer. Where the refusal continues and it is clear that the taxpayer has no statutory or other legal basis for refusing to facilitate the enquiry, the taxpayer will be advised that it is an offence to fail to provide reasonable assistance or obstruct an authorised officer.<sup>6</sup>

Situations do arise where it is necessary for Revenue Jersey to take immediate action to secure the information. The officer may, in this situation, contact a senior officer to request support. In all but the most exceptional of circumstances, a report of such cases will be made with a view to referring the matter for criminal prosecution.

#### 4.5 Periods and issues covered by a Revenue Jersey intervention

A Revenue Jersey intervention generally focuses on one year or period where a specific risk has been identified. However, multi-year (or period) compliance interventions may be carried out where material risks are identified for a number of years (or periods). These risks will have been informed by the data sources available to Revenue Jersey.

The specified period outlined in an intervention notification will not preclude Revenue Jersey from extending the period of that intervention if information is uncovered during the enquiry to support such an extension.

Where the initial scope of a Revenue Jersey intervention is extended to other years, periods and/or revenue types, the taxpayer may have an additional opportunity (where required) to make a disclosure.

Where tax defaults arise in a director-owned company, it is usually for the benefit of one or more of the directors. Consequently, an enquiry into a director-owned company may include an enquiry about the directors' tax affairs. In such situations, all parties subject to the enquiry will receive a notice from Revenue Jersey.

#### 4.6 Extending the period of the intervention

Initially a Revenue Jersey intervention will concentrate on the year(s), period(s) and issues indicated in the intervention notice. However, issues may arise during the course of the enquiry that require Revenue Jersey to consider opening earlier or later years. In these circumstances taxpayers may have additional scope for disclosure opportunities.

A decision on whether to open earlier years (or periods) will be based on Revenue Jersey's overall compliance priorities, the time factor involved, the likely outcome, materiality and the additional costs arising for both taxpayers and for Revenue

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<sup>6</sup> Income Tax Law, Article 141C

Jersey. Depending on other factors, a taxpayer's compliance record might also be taken into account.

Earlier years or tax periods will only be opened if there is a sound basis for believing that significant tax defaults have taken place in those earlier periods.

The opening of earlier years or periods is unlikely to arise:

- Where the understatement of liability is relatively small;
- Where there is no significant unexplained accumulation of assets; or
- Where there is a difference of opinion in the technical treatment of an item but the loss of revenue is relatively small.

By contrast, reasonable grounds for considering opening earlier years may arise in the following types of case:

- Where there is a significant unexplained accumulation of assets;
- Where there are strong indicators that a scheme to evade tax has been in operation;
- Where there are strong indicators that a tax avoidance scheme exists that requires further examination; and
- Where substantial loss of revenue has arisen in the year or period of a Revenue Jersey intervention, and it is likely that a similar position existed in previous years.

Where Revenue Jersey has reasonable grounds for believing that a return or declaration is incorrect due to any form of fraud or wilful default, a compliance intervention into any return may be made for any period irrespective of any statutory limit (where a time limit applies to that particular tax).

Part of Revenue Jersey's focus with its intervention programme is to bring taxpayers' affairs up to date. Accordingly, where the issue giving rise to an adjustment in the period of the enquiry also occurs in later periods, Revenue Jersey will seek payment of the tax due for later periods, in addition to collecting the tax arising from the enquiry period.

#### **4.7 Cases that have previously been subject to an intervention**

Taxpayers are expected to disclose everything relevant when a Revenue Jersey intervention is conducted. Should it appear necessary, the taxpayer's affairs may be further reviewed and prosecution may be considered where it appears material facts were not disclosed, or if Revenue Jersey has been deliberately misled.

#### **4.8 Timeframe for concluding interventions**

It is in everybody's interest that a Revenue Jersey compliance intervention is concluded as quickly as possible. Where the:

- The taxpayer has dealt with all outstanding queries, and has done so within a reasonable period of time, and

- The intervention still remains open after a period of 3 months of inactivity.

The taxpayer or adviser can request the Comptroller to close the intervention.

#### 4.9 Data protection and data retention

Revenue Jersey is a data controller under the [Data Protection \(Jersey\) Law 2018](#). It collects information for the purposes of administering and collecting revenues on behalf of the States of Jersey. Read Revenue Jersey's [privacy policy](#).

Revenue Jersey's data retention policy states that tax information will ordinarily be held for 10 years. Any information gathered during the course of a compliance intervention that is not required for the purposes of concluding the intervention will be returned to the taxpayer, or securely destroyed if the taxpayer does not want it returned.

A permanent summary record may be held in order to evidence compliance behaviour trends over the longer term.

## 5 Information production powers

**Note:** As of 1 April 2021, civil information powers are not in force. The Minister proposes to bring forward legislation so that it comes into force during 2021.

In the meantime, Revenue Jersey will continue to rely on the existing powers contained in the Income Tax Law.

The majority of taxpayers cooperate with Revenue Jersey when they are asked to provide information. When information is not produced following an informal approach, it is likely that a formal approach will be necessary. Third parties (e.g. banks) generally require a formal notice before they are able to provide information.

There are consequences for failing to comply with a formal notice.

### 5.1 Powers to obtain information

A notice may be issued under Article 16A of the Income Tax Law. A failure to comply with such a notice results in a court-imposed fine on the standard scale.

A direction may be issued under paragraph 18 of Schedule 8 of the GST Law; failure to comply with a direction results in an offence being committed and a court-imposed fine on the standard scale.

After the civil powers come into force, Revenue Jersey will only pursue information using these existing powers, if either:

- Revenue Jersey has first sought to obtain the information using its civil powers under the RAL and the information has not/has not fully been provided; or
- The matter is a serious matter involving likely investigation with a view to criminal prosecution, in which case the alternative powers may be the first line of enquiry.

### 5.2 Record-keeping requirements

Formal requirements to keep records are set out in legislation. The fact that a document does not have to be legally kept is not an excuse for failing to provide a document or failing to comply with a notice to produce information.

**Individuals:** Part 6 of the RAL sets out record-keeping requirements and applies to individuals (other than the self-employed and those letting out property) rather than businesses. Records should be kept for at least 2 years following the end of the year of assessment, and should be sufficient to enable the individual's tax liability to be ascertained, and support any return or declaration made to Revenue Jersey.

**Businesses:** Businesses, including employers, self-employed individuals and individuals letting out property, have more stringent requirements to keep records under the [Taxation \(Accounting Records\) \(Jersey\) Regulations 2013](#). Records should

be held for at least 6 years following the end of the year of assessment. If registered, businesses are also required to keep records for [GST purposes](#).

Other record-keeping requirements, such as those set out in company law, may also apply.

## 6 Inaccurate declarations

**Note:** The civil penalties in the Revenue Administration Law (RAL) came into force on 1 January 2020.

**All compliance interventions opened prior to the RAL coming into force will be concluded using the existing powers in the Income Tax Law. Any settlement offer made under Article 137(4) of that law will not exceed the civil penalty amount that Revenue Jersey considers would be payable if the RAL had been in force.**

Most taxpayers take reasonable care when fulfilling their tax obligations, but if an inaccurate declaration is made, Revenue Jersey can apply civil penalties.

The purpose of imposing a penalty is to influence taxpayer behaviour: Revenue Jersey wants the majority who try to get their taxes right to be confident that those who choose not to comply do not gain an unfair advantage.

Part 4 of the RAL contains powers that allow Revenue Jersey to take action against a taxpayer who makes an inaccurate declaration in respect of their income tax affairs. It is anticipated that the scope of Part 4 of the law will be extended in the near future to include all tax types.

In cases of fraud, Revenue Jersey may continue to use Article 137 of the Income Tax (Jersey) Law 1961 and ask the Attorney General to prosecute a taxpayer through the courts.

This section sets out guidance covering what happens when an inaccurate declaration is discovered. As guidance, it does not cover every eventuality.

This is a working section that will be updated over time.

### 6.1 Occasions when a penalty might be payable

A penalty for an inaccurate declaration might be payable when inaccurate information is given to Revenue Jersey.

An inaccurate declaration covers not only a declaration made on a tax return, although this is likely to be the source of most inaccurate declarations. Information can be given to Revenue Jersey in a number of ways, including by letter, telephone, or online. The provisions also cover information given in respect of other persons, e.g. a precedent partner completing a partnership return or an executor completing an estate return.

The inaccuracy must be in respect of income tax. Some common examples where a penalty might be payable include:

- Omitting or understating income;
- Overstating a claim for an allowance, deduction, or relief; or
- Providing other inaccurate information that has a bearing on a tax liability.

In future, penalties will also apply to businesses that are registered for GST, and that make an inaccurate declaration in relation to their GST obligations.

Not all inaccurate declarations will result in a penalty being charged. See the section on [types of inaccurate declarations](#).

### 6.1.1 Legitimate tax planning

A taxpayer is entitled to manage their affairs to achieve tax efficiency, as long as they act within the spirit of the law. This means acting in a way that is consistent with the objectives of the States Assembly. A simple example would be for an unmarried couple to maximise the use of child allowances between them, in order to ensure that no portion of the allowance is wasted; another example might be where a sole trader takes the decision to incorporate.

Tax avoidance arises where the sole or primary purpose of an action or scheme is to create a tax loss without any actual economic loss to the taxpayer concerned. Tax avoidance exploits the tax law to secure a financial advantage in a way that the States Assembly did not intend – and it places an unfair burden on the majority of those taxpayers who comply as intended.

It is not the view of Revenue Jersey that tax avoidance is prevalent in the Island; but where it is found to be in operation, [Article 134A](#) of the Income Tax Law may be used.

## 6.2 Types of inaccurate declarations

There are three types of inaccurate declaration. They can happen when an inaccuracy occurs:

- Despite the taxpayer taking reasonable care;
- As a result of carelessness; or
- As a result of deliberate behaviour.

If the taxpayer who has made the inaccurate declaration discovers the inaccuracy and notifies Revenue Jersey of the error, reduced penalties may apply. See the section on [voluntary disclosures](#).

In general, higher penalties are reserved for the most serious cases e.g. where a taxpayer has deliberately tried to reduce their liability to pay tax by providing inaccurate information to Revenue Jersey.

### 6.2.1 Reasonable care

Everybody should take 'reasonable care' with their tax affairs. If a taxpayer takes reasonable care, but still makes an error, Revenue Jersey will generally not charge a penalty. If a taxpayer does not take reasonable care, by definition they have been careless, at a minimum.

Reasonable care means a taxpayer must take the same care that a reasonable taxpayer in the same circumstances would take. There should be no presumption that an inaccurate declaration automatically indicates a failure to take reasonable care.

The standard of reasonable care does not require perfection, nor does it intend to impose an overly onerous burden on those who need to comply with the tax laws. But it does mean giving appropriately serious attention to complying with one's tax obligations.

In UK case law, the test as to whether a taxpayer took reasonable care is set out in *Anderson (Deceased) v Revenue & Customs* [2009] UKFTT 258 (TC), where the judge stated: "The test to be applied, in my view, is to consider what a reasonable taxpayer, exercising reasonable diligence in the completion and submission of the return, would have done."

### 6.2.2 Standard of reasonable care will vary

There is no fixed definition of a 'reasonable' taxpayer so the term takes its ordinary meaning. The standard will be different for each taxpayer, depending on the circumstances. It differs from the objective test that is employed in cases concerning negligence. This subjective approach is supported by UK case law<sup>7</sup>, to which the Jersey courts will often refer, especially if there is no relevant Jersey case law.

Revenue Jersey may take into account the particular circumstances of the taxpayer, including factors such as:

- Knowledge, education, experience, and skill;
- Personal circumstances (e.g. health and background); and
- Familiarity with the Jersey tax laws.

[Example 3](#) is provided in Appendix 1.

Revenue Jersey expects a higher standard of care from large companies than from, for example, small businesses. A taxpayer with simple affairs such as an employed taxpayer who has no other sources of income, would show reasonable care by reading the guidance notes that accompany the tax return. Conversely, a business that has more complicated affairs would be expected to put in place procedures, controls, and checks to help ensure they are compliant with their tax obligations. Not every business will be the same – regard would need to be taken as to the size and nature of the business. [Example 4](#) is provided in Appendix 1.

A taxpayer who is unfamiliar with Jersey's tax system such as a new arrival or a school leaver, should be measured against a taxpayer with equivalent levels of knowledge and experience, rather than against someone who has had many years' experience in dealing with the tax system.

In some cases, the standard of care could be affected by factors such as the complexity of a provision in the tax law, or the relative age of the provision. These factors may influence a taxpayer's understanding or interpretation of their lawful entitlement or obligations.

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<sup>7</sup> *Hanson v HMRC* [2012] UKFTT 314(TC) at [21];

See also: *Harding v HMRC* [2013] UKUT 575(TC) at [35]; and *Martin v HMRC* [2014] UKFTT 1021(TC) at [127]

Where there is any uncertainty about the tax treatment, a reasonable taxpayer would be expected to take steps in order to arrive at the correct treatment. This could involve contacting Revenue Jersey; referring to Revenue Jersey publications or the Government website; or seeking advice from a tax professional.

If there is still uncertainty despite taking steps to determine the correct treatment, a reasonable taxpayer would draw attention to the particular entry on the declaration or document. If the entry is later discovered to have been wrong, the taxpayer is unlikely to be considered to have acted carelessly.

### 6.2.3 Complex structures and implementation failures

When a taxpayer engages in a complex structure, the threshold for reasonable care is likely to be higher. A taxpayer would be expected to carefully consider obtaining professional advice from a lawyer, tax adviser, or accountant. In some cases it may be reasonable for a taxpayer to obtain a second opinion, before going ahead with the implementation of the structure. A taxpayer who engages in a complex structure may mitigate potential penalties by making a voluntary disclosure.

In the event that a taxpayer obtains professional advice on a tax matter but does not follow that advice completely, it is likely that the taxpayer has demonstrated *at least* careless behaviour, perhaps even deliberate behaviour.

A taxpayer would not be considered to have taken reasonable care if they engage in schemes that are later defeated in the courts. However, if at the time of submission of the document, the taxpayer's submission is in line with accepted practice then it is unlikely Revenue Jersey would charge a penalty. There would be a higher burden of proof on Revenue Jersey to demonstrate that the taxpayer was at fault when following established practice.

### 6.2.4 Examples of reasonable care

Taxpayers can still make errors despite taking reasonable care. For example, penalties might not apply when:

- Making a minor mathematical or transposition error
- Relying on advice from Revenue Jersey that is not correct
- Despite following sound internal control systems and procedures, an individual within a business produces an inaccuracy that results in a minor inaccurate tax declaration

When considering whether an error is 'minor' Revenue Jersey will look at the tax result in both relative and absolute terms. [Example 5](#) is provided in Appendix 1.

When obtaining clarification from Revenue Jersey on a tax matter, it is advisable to do so in writing, in case it needs to be relied on at a later time. All the relevant details concerning the situation must be given. Revenue Jersey is unable to provide accurate clarification unless full and complete details are provided.

Businesses often have to rely on internal systems and controls to help them make accurate declarations (e.g. the maintenance of accurate information in order to produce financial statements; conducting regular stock takes; providing adequate training for staff). [Example 6](#) is provided in Appendix 1.

A failure to maintain proper systems and controls would likely result in a failure to take reasonable care. What constitutes reasonable care would be different for each business depending on its unique set of circumstances. It would not be reasonable to compare a small family-run business with a multinational enterprise – large companies often have dedicated teams that look after tax and other legal obligations, whereas in a small company there might be one individual who takes care of all administrative matters. The inherent risks each of these example companies present to Revenue Jersey are likely to differ significantly.

Her Majesty's Revenue and Customs (HMRC) has other [examples of inaccuracies despite taking reasonable care](#) on the GOV.UK website.

#### 6.2.5 Careless behaviour

A taxpayer is at least careless if they have not taken [reasonable care](#).

It is not a question of whether the taxpayer is aware of the error when making the declaration. If they were aware, then they would have engaged in [deliberate behaviour](#).

There does not have to be a loss of tax to constitute careless behaviour, but as the penalty is based on the amount of tax lost, no penalty is imposed in cases where there has been no tax lost.

[Examples 7 and 8](#) are provided in Appendix 1.

#### 6.2.6 Repeated careless behaviour

In some cases a taxpayer may make the same or similar errors a number of times. Repeated carelessness can happen but it might also suggest deliberate behaviour. If a taxpayer is made aware of a potential inaccuracy, or the causes of the inaccuracy, but does not take steps to correct it, they could be considered to have engaged in deliberate behaviour.

An increased penalty is available when the same taxpayer, who has already received a penalty in the past five years, makes a second or further inaccurate declaration. See the section on [higher penalties for repeat cases](#).

#### 6.2.7 Deliberate behaviour

There is no statutory definition of 'deliberate' so the words take their ordinary meaning. The Collins English Dictionary provides the definition of deliberate as: "carefully thought out in advance; planned; studied; intentional". The main difference between careless and deliberate behaviour is therefore one of knowledge; a taxpayer must have to some extent acted consciously with regard to the inaccuracy.

In *Clynes v HMRC* [2016] UKFTT 369 (TC), Judge Morgan stated at paragraph 82: “for there to be a deliberate inaccuracy on a person’s part, the person must to some extent have acted consciously, with full intention or set purpose or in a considered way” and at paragraph 83:

The fact that the deliberate conduct is tied to the inaccuracy, indicates that for this penalty to apply the person must have, in a subjective sense, acted with some level of knowledge or consciousness as regards the inaccuracy.

An inaccuracy may also be considered deliberate where a taxpayer consciously or intentionally chooses not to find out the correct position, crucially where that taxpayer knows they should do so.

This category also includes activities that may amount to fraud and tax evasion. Revenue Jersey may ask the Attorney General to prosecute when the matter is considered very serious. See the section on [criminal prosecution](#).

If a taxpayer deliberately makes an inaccurate declaration, they are making the choice not to fairly contribute to towards our vital public services. This puts an unfair burden on the majority who choose to comply.

As a result, the highest penalties are reserved for those who choose to make an inaccurate declaration to Revenue Jersey.

Some examples of deliberate behaviour would include:

- Knowingly entering an income figure on a tax return that is lower than the actual figure;
- Overstating an amount for a claim for an allowance or relief when the applicant is aware, or unsure, of their non-eligibility;
- An employer purposefully under-declaring a deduction made from an employee, because the employer does not have sufficient funds to pay the ITIS debt for that month;
- Entering input tax on a GST return that is higher than the actual input tax, despite being in possession of information that contradicts the declaration;
- Not taking an action that a taxpayer knows is necessary to ensure an accurate declaration; and
- Being aware that there is an inaccuracy in declarations a taxpayer has already made and they do not inform Revenue Jersey.

The key point in the above examples is the knowledge of the individual who is making the inaccurate declaration. Unlike in cases of carelessness, an individual making a deliberate inaccurate declaration is not acting with complete honesty.

It is not necessary for the taxpayer to know the tax consequences arising from the behaviour, just to know that they have not accurately represented the position.

[Example 9](#) is provided in Appendix 1.

In some cases, a taxpayer may not only make a deliberately inaccurate declaration, but also take steps to hide their actions. Examples of this may include:

- Submitting paperwork that has been deliberately fabricated or altered;
- Intentionally destroying information relevant to a tax obligation
- Creating false minutes of business meetings

The burden rests with Revenue Jersey to demonstrate the intent of the taxpayer in making an inaccurate declaration. Evidence of intent must be found directly, or by deduction with regard to the circumstances of the case. The burden of proof is not as high as for fraud or tax evasion as these penalties are not criminal sanctions.

### 6.2.8 Under-assessment by Revenue Jersey

In some cases a taxpayer may receive an assessment from Revenue Jersey that they know to be inaccurate. This could be because the taxpayer realises they have provided inaccurate information, or because Revenue Jersey has issued an inaccurate estimated assessment in the absence of a completed tax return.<sup>8</sup>

A taxpayer who receives an inaccurate assessment, and who knows it to be inaccurate, must tell Revenue Jersey when they become aware of the error.

If Revenue Jersey discover an under-assessment, the assessment may be amended up to 5 years from the end of the year of assessment.<sup>9</sup>

### 6.2.9 Tax advisers and other third parties

Many taxpayers have tax advisers or accountants to help them with their tax affairs, but the responsibility to make correct declarations rests with the taxpayer, not with the adviser. A taxpayer who has engaged the services of a tax professional must provide all relevant information to their adviser and answer questions when asked.

When a taxpayer is required to sign documents that will be lodged by the adviser, that taxpayer must not treat it as a 'mechanical' process but must check the content and confirm that it reflects the information they provided.

The UK courts considered this question in 2012 and supported this view. In *Hanson v HMRC* [2012] UKFTT 314 (TC), Judge Cannan stated at paragraph 24:

[A] taxpayer cannot simply leave everything to his adviser. A taxpayer must certainly satisfy himself that the adviser has not made any obvious error. That might involve the taxpayer seeking to understand the basis upon which an entry on his return has been made by the adviser. However in matters that would not be straightforward to a reasonable taxpayer and where advice from an adviser has been sought which is ostensibly within the adviser's area of competence, the taxpayer is entitled to rely upon that advice. At the heart of this issue is the extent to which a taxpayer is required to satisfy himself that the advice he has received from a professional adviser is correct. The answer to that will depend on the particular circumstances of the case.

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<sup>8</sup> Income Tax Law, Article 23

<sup>9</sup> Income Tax Law, Article 24

The same responsibility applies when there is a less formal arrangement in place, for example when relying on a friend or family member for help and advice. [Example 10](#) is provided in Appendix 1.

Similarly, if a taxpayer relies on information provided by a third party, and that information leads to an inaccurate declaration, it is not necessarily the case that the inaccuracy is attributable to the third party.

### 6.3 Calculating the penalty

In order to calculate the penalty for an inaccurate declaration, Revenue Jersey will need to establish:

- how and why the inaccuracy arose;
- whether the inaccuracy was due to the careless or deliberate behaviour of the taxpayer;
- the amount of tax lost; and
- whether there are any circumstances that would allow the penalty to be reduced.

With reference to whether an inaccurate declaration was due to careless or deliberate behaviour, reference should be made to the section on [types of inaccurate declarations](#).

#### 6.3.1 Minimum and maximum standard penalties

Article 12 of the RAL sets out the maximum and minimum penalties that can be applied in respect of each category of behaviour. These are shown in the table below:

Behaviour	Maximum	Minimum
Reasonable care	0%	0%
Careless	30%	10%
Deliberate	100%	50%

The starting point for Revenue Jersey in each case is the maximum penalty allowed in law. However, this maximum penalty may be reduced depending on the [quality of the disclosure](#). The percentage penalty cannot be reduced below the minimum level allowed for the type of taxpayer behaviour displayed in the particular case.

#### 6.3.2 Higher penalties for repeat cases

The maximum penalty can be increased in repeat cases, as follows:

Behaviour	Maximum	Maximum for repeat case
Reasonable care	0%	0%

<b>Careless</b>	30%	45%
<b>Deliberate</b>	100%	150%

The increased penalty for repeat cases does not affect the minimum penalty available.

A repeat case is where the same taxpayer has been found to have made a second or further inaccurate declaration within five years of making an initial inaccurate declaration. The five year period refers to five calendar years, rather than years of assessment.

### 6.3.3 Calculating the difference

The penalty is applied to the amount of tax lost (referred to as the 'difference'). Article 10 of the RAL provides a legal definition of the difference as follows:

*“difference” means the difference between the amount of tax that would be chargeable on the person calculated on the basis of the inaccurate statement and the amount of tax that would be chargeable if the statement were correct.*

[Example 11](#) is provided in Appendix 1.

It is not necessary for an assessment to have been raised and tax charged for a tax difference and a penalty to apply. What matters is what would have happened if the inaccurate statement had been accepted.

Sometimes an error can result in tax lost over more than one year of assessment. If that is the case, all relevant tax assessments that are affected by the error will be reviewed.

For the purposes of calculating the difference, 'tax' does not include [long-term care contributions](#) that are collected by Revenue Jersey on behalf of the Minister for Social Security.

### 6.3.4 Reducing the penalty

There is no obligation on Revenue Jersey to reduce the maximum penalty. However, this guidance describes how Revenue Jersey will normally exercise its discretion.

The starting point when calculating a penalty is the maximum allowed by law. Most taxpayers will be able to reduce the penalty if they make a quality disclosure. Penalties will be notably lower when a taxpayer makes a voluntary disclosure. See the section on [voluntary disclosures](#).

### 6.3.5 Quality of disclosure

A taxpayer who is not entitled to a reduced penalty for a voluntary disclosure may still take steps to reduce the maximum penalty by making a high quality disclosure. The purpose of having a range of penalties is to encourage taxpayers to make timely,

cooperative, and sufficiently detailed disclosures that allow Revenue Jersey to quickly conclude cases.

Demonstrating **good cooperation** during a Revenue Jersey intervention may result in a full reduction of the penalty from the maximum to the minimum for that behaviour. The effect of a full reduction is the application of the lowest possible penalty as set out in legislation. On the contrary, if there has been little or no cooperation by the taxpayer then a penalty toward the higher end of the scale would generally be applied. Most cases will fall somewhere in between the two.

A taxpayer will be able to reduce the penalty when cooperation is demonstrated by **prompt interactions** with Revenue Jersey. When a voluntary disclosure is made, consideration should be given to the amount of time taken by the taxpayer to come forward. In general, if a taxpayer has taken more than 3 years to make a voluntary disclosure, a reduction should only be available in exceptional circumstances.

Examples of prompt interactions include:

- Informing Revenue Jersey as soon as the taxpayer becomes aware of an inaccuracy;
- Telling Revenue Jersey immediately about any known inaccuracies or uncertainties on receipt of notification of an intervention;
- Providing information within the timeframes requested (or if that is not possible, requesting an alternative reasonable timeframe); and
- Engaging in a proactive approach as soon as possible.

A taxpayer is expected to cooperate throughout the full period of the compliance intervention.

A taxpayer can demonstrate good cooperation by providing **assistance** throughout the period of the intervention. Examples include:

- Proactive assistance rather than providing the minimum possible information;
- Volunteering relevant information that may not necessarily have been requested;
- Obtaining information from third parties e.g. bank statements; and
- Making efforts to attending meetings when requested, whether held at Revenue Jersey offices or on the taxpayer's business premises.

Revenue Jersey will not expect to have to chase or remind taxpayers to provide the information requested. A reduction for cooperation will be significantly limited if formal [information powers](#) are necessary to commence or proceed with an intervention.

When a taxpayer demonstrates good cooperation they are expected to provide sufficient **detail** to allow Revenue Jersey to proceed with the case without having to repeatedly revert to ask additional questions. If applicable to the case, a taxpayer is expected to:

- Provide full details of the inaccuracy, rather than making a piecemeal disclosure;
- Explain how and why the inaccuracy happened;
- Supply useful information that helps finalise the intervention; and
- Provide details of a different interpretation of the law, if a taxpayer disputes there is an inaccuracy.

There are likely to be instances where the cooperation given by a taxpayer would enable Revenue Jersey to reduce the penalty for a number of reasons. Each case is considered on its merits when determining the level of reduction available.

### 6.3.6 Inaccurate declarations that result in a higher tax liability

Sometimes taxpayers make mistakes that result in a higher tax bill for them. Common examples include overstating income or failing to claim allowances. A taxpayer may make a claim for relief by contacting Revenue Jersey within five years of the end of the year of assessment.

**Example:**

Year of assessment	2018
Assessment issued	25 June 2019
Time limit for making a claim	31 December 2023

Since this section is primarily concerned with inaccurate declarations that result in a loss of tax, this matter is not covered further here.

## 6.4 Processing the penalty

Before a penalty notice is issued, Revenue Jersey will issue a summary letter to the taxpayer. This should contain:

- The facts and conclusions of the case;
- Revenue Jersey's assumptions and views;
- Whether it is believed the taxpayer has engaged in careless or deliberate behaviour, and the reason(s) why; and
- The level of cooperation that has been allowed and the basis for determining this level.

Once the penalty has been created, a penalty notice must be issued to the taxpayer. Under Article 13 of the RAL, a penalty notice must contain:

- The amount of tax that would be chargeable on the taxpayer calculated on the basis of the incorrect statement;
- The amount of tax that would be chargeable if the statement were correct;
- The difference, i.e. the tax lost;
- The amount of penalty; and

- Whether the penalty is calculated under Article 12(1)(a) or (b) and, if relevant, that Article 12(2) or (3) applies.

Article 14 of the RAL states that a taxpayer in receipt of a penalty notice has 40 days in which to appeal to the Commissioners of Appeal, by giving notice to the Comptroller.

#### 6.4.1 Deferred payment

If a taxpayer cannot settle the penalty and additional tax (if any) then they may be able to come to an arrangement with Revenue Jersey to pay the liability over a period of time.

Reference will be made to the Treasury debt team. In most cases, it is unlikely that Revenue Jersey will agree to a payment arrangement that continues for longer than [2] years.

### 6.5 Appealing a penalty

Article 14 of the RAL provides a 40 day period, following the issue of a penalty notice, in which a taxpayer may appeal against a penalty. As with all appeals, the appeal must be to the Commissioners, on giving written notice to the Comptroller.

An appeal can be against the charging of a penalty, or the amount of the penalty.

#### 6.5.1 Who can appeal a penalty

In the majority of circumstances the penalty can only be appealed by the taxpayer on whom the penalty was charged, or their appointed representative (e.g. tax adviser, trustee, executor, etc.).

If a deliberate penalty is charged on a company, which is attributable to an officer of the company, the officer in question may be liable to pay the penalty, or a portion of it. This is an exception to the general rule above.

#### 6.5.2 What an appeal should contain

An appeal should state the ground(s) for appeal; and, if appealing against the amount of the penalty, indicate how much the penalty should be, in the view of the appellant.

When stating the grounds for appeal, a taxpayer should include as much detail as possible in order to support their position. It is not sufficient for a taxpayer to merely state that they disagree with the penalty – it is important to set out the reasons why they disagree.

An appeal should be acknowledged in writing (or by the taxpayer's preferred method of communication) by Revenue Jersey.

#### 6.5.3 Internal case review

Although Article 14 of the RAL only permits an appeal to the Commissioners of Appeal, it is the practice of Revenue Jersey to try to resolve an appeal by conducting

an internal case review. Article 87 of the GST Law specifically permits the settlement of appeals by agreement without the need for a determination by the Commissioners.

The internal review should be handled by a Revenue Jersey officer who has had no previous involvement with the imposition of the penalty in that particular case. If the matter cannot be settled by the case review then it may be necessary for the case to proceed to the Commissioners.

#### 6.5.4 Commissioners of Appeal

The Commissioners are able to decide whether or not an appeal has been correctly made and they are able to determine whether or not the amount of penalty charged is appropriate.

### 6.6 Compliance interventions that straddle 1 January 2020

For a transitional period, some compliance interventions will straddle the coming into force date of the RAL.

Generally speaking, where an incorrect declaration is made prior to 1 January 2020, Revenue Jersey will conclude the intervention by reference to the provision in Article 137(4) of the Income Tax Law, and offer a monetary settlement in place of a prosecution.

If a compliance intervention straddles 1 January 2020, the years or periods before that date will be handled by settlement, whereas declarations made after that date will be subject to civil penalties under the RAL.

When a straddling compliance intervention is concluded, Revenue Jersey must make it clear to the taxpayer that part is a settlement offer, and part is a civil penalty that may be appealed.

# 7 Interest and late payment penalties

## 7.1 Interest and penalty interest

<b>Interest and penalty interest are only chargeable in respect of years of assessment or tax periods beginning on or after [1 January 2022].</b>
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Interest is payable when a tax liability is not paid by the payment due date. If it is clear that a taxpayer has underpaid their correct liability to tax, interest is charged in accordance with Part 5 of the RAL. Interest will therefore arise from the original due date up to the date of payment.

Penalty interest will also arise in cases where a liability is not fully settled within 3 months following the payment due date.

The rates of interest are to be decided by the States Assembly.

## 7.2 Late payment surcharge

**Income tax:** under Article 411 of the Income Tax Law, the 10% late payment surcharge is also charged when a tax liability is not paid by the payment deadline. If, as a result of a compliance intervention, Revenue Jersey finds that a taxpayer has not paid their correct liability to tax in full, the 10% surcharge will be imposed on the underpayment.

The income tax surcharge does not apply to "ITIS taxpayers" i.e. those individual taxpayers who are employed and do not receive a payment on account notice.

**GST:** a late payment surcharge of 10% is charged when GST is not paid on time, in accordance with Article 74 of the GST Law.

# 8 Application of this guidance to other functions of Revenue Jersey

## 8.1 Other functions of Revenue Jersey

Revenue Jersey conducts functions under legislation other than the core revenue laws, as set out in Article 2 of the Revenue Administration Law.

Examples include the application of the [Taxation \(Companies – Economic Substance\) \(Jersey\) Law 2019](#), and the [Taxation \(Accounting Records\) \(Jersey\) Regulations 2013](#).

## 8.2 Interaction with Revenue Jersey interventions conducted under this guidance

Where Revenue Jersey officers conducting a compliance intervention become aware of risks, potential failures or other impacts in relation to the other functions they will resolve these issues within their compliance check where appropriate, or refer the risks to the relevant specialists.

Where Revenue Jersey officers address and resolve these issues within their ongoing compliance check they will seek the views of specialist staff to ensure that they are proceeding consistently with the approach across Revenue Jersey.

## 8.3 Relevance of this guidance to other compliance checks

The legislative provisions across the functions of Revenue Jersey vary, and as such these compliance checks will need to be modified accordingly. However, this guidance will be followed by analogy to the extent this is possible.

The core objective of any compliance intervention conduct by Revenue Jersey remains to promote voluntary compliance with the law.

# Appendix 1 – Examples

## Example 1

Sarah inherited a property in Jersey a few years ago from which she receives rental income. She hasn't yet declared the income on her tax return.

Revenue Jersey discovers from court records that the property has passed to Sarah. Sarah receives a letter from Revenue Jersey enquiring about the property and replies to say she was just about to make a disclosure.

Sarah would not be entitled to a reduction for a voluntary disclosure, because Revenue Jersey's letter is specifically enquiring into the matter of the property.

## Example 2

Ben completes the online voluntary disclosure form, advising that he has over-claimed expenses relating to his employment for the years of assessment 2018 and 2017.

Revenue Jersey asks for clarification on a particular point, and it comes to light that Ben has not disclosed over-claimed expenses in relation to 2016 and 2015. Even if Ben quickly provides the missing information, he would not benefit from the full reduction available for a voluntary disclosure for 2016 and 2015 because of the piecemeal nature of the disclosure.

## Example 3

Joan has recently been diagnosed with a serious illness, meaning she has had to attend frequent hospital appointments. When preparing her tax return, she overlooked one of her investment income accounts.

Under the circumstances, it is reasonable to conclude that the stress caused by Joan's diagnosis contributed to her failure to make a correct declaration. The reasonable care threshold for Joan, therefore, is lower than that of a taxpayer who is not dealing with a serious illness.

## Example 4

Ian is a qualified tax professional who provides tax services as part of his work. On his own tax return he makes a claim for mileage allowance that includes all of his journeys to and from work.

With his experience, Ian should have been more than aware that he is not entitled to make such a claim. The standard of care that Ian should have demonstrated in making the claim should not be compared with someone who has no professional experience in tax.

### Example 5

When completing her tax return, Hannah mistakenly enters her bank interest as £12 instead of £21. All of her other entries are correct. The resulting tax bill is £2 lower than it should have been.

This is both absolutely and relatively minor, so would not attract a penalty.

### Example 6

Peartree International Limited is a large finance company based in Jersey, employing over 300 individuals.

It has taken on a new employee and immediately put him in charge of the company's ITIS obligations, without sufficient training. The first two months of ITIS returns are found to be incorrect, resulting in a significant underpayment of its employees' ITIS.

Peartree cannot be said to have taken reasonable care, because a company of its size would be expected to put in place appropriate training before asking employees to undertake this key responsibility.

### Example 7

On his tax return, James declares his net rental income as £205 rather than £2,005. The resulting tax bill is £470 lower than it should have been.

Since James's correct tax bill is £800, the error resulted in a proportionately large reduction in his liability, meaning it is unlikely Revenue Jersey would accept that James took reasonable care in completing his tax return.

### Example 8

As an electrician who runs his own small business, Graham works long hours during the week, and works over most weekends. He also has a young family.

When submitting his tax return, Graham forgets to enter his bank interest. After being challenged, he claims that he forgot because he is always extremely busy.

Although it is clear that Graham has a demanding work and home life, these are not circumstances that are unique to him, and do not warrant special treatment. Graham knows he is busy, so he must devote adequate time to his tax affairs, or seek professional advice.

HMRC has some other [examples of careless inaccuracies](#).

### Example 9

Nicola operates an events business from home. When preparing her income and expenditure statement for her tax return, Nicola includes the money she pays to her domestic cleaner in her business expenditure, even though she knows the cleaner is not part of her business operation. In this case, she will be liable to a deliberate penalty.

HMRC has some other examples of [deliberate but not concealed inaccuracies](#), and examples of [deliberate and concealed inaccuracies](#).

### **Example 10**

Neil is a self-employed gardener who has appointed an accountant to help him with his tax return. Each year he provides all his business invoices and receipts to his accountant.

When completing his tax return, Neil relies on the information provided to him by his accountant. He checks the figures and they seem to him to be right.

Unknown to Neil, his accountant has incorrectly included capital expenses as revenue expenses. As Neil does not have the expertise to realise this, he is deemed to have taken reasonable care.

*Revenue Jersey would likely visit the accountant to advise of the correct treatment and ask the accountant to identify any other cases where the incorrect treatment had been included in tax submissions.*

### **Example 11**

On her tax return, Jules declares her total income as £25,500. She chooses not to include her bonus of £5,000 because she doesn't think bonuses are taxable.

Based on her inaccurate declaration, the original tax bill was £2,800. Once Revenue Jersey finds out about Jules's bonus, the lawfully correct tax due is £4,000.

The difference is therefore  $4,000 - 2,800 = £1,200$ .

In this example, if Jules had been careless, the maximum penalty would be  $1,200 \times 30\% = £360$ .