

STATES OF DELIBERATION

12th November, 2015

Billet d'État No. XX

AMENDMENT **Article XIV**

Proposed by: Deputy G A St Pier
Seconded by: Deputy J Kuttelwascher

Treasury and Resources Department **Miscellaneous Amendments to Income Tax Legislation**

To insert after proposition 1(j) the following additional propositions:

5. In order to ensure greater equality between all persons in the ability to claim personal and other tax allowances:
 - (a) To provide that two individuals of the same sex who have together entered into a marriage or a civil partnership shall be treated for the purposes of the Income Tax (Guernsey) Law, 1975 and any Ordinance, Regulation or Resolution under it in the same way as a husband and wife, and that references to a husband, wife or widow, a spouse, a marriage or a party to a marriage, or an individual who is married or unmarried shall be construed accordingly.
 - (b) In such cases, to agree that the income of the younger partner to the same sex marriage or civil partnership shall be treated as the income of the older partner for all of the purposes of assessment and collection of tax (including the completion of returns, unless an election is made for separate assessment), and all references to husbands and wives shall be deemed to be the older and younger partner, respectively, of the same sex marriage or civil partnership, as defined in the new proposed section 47AA of the Income Tax (Guernsey) Law, 1975.
 - (c) To agree that personal allowances may be transferred between same sex co-habiting couples with children, where the couple are recipients of a Family Allowance, in the same manner as between co-habiting couples of the opposite sex laid down in the proviso to paragraph 6(2)(c) of the second schedule to proposition 28 of the States' resolution of the 29th October 2015 on Billet XIX of 2015, provided that all other conditions in respect of the eligibility to elect to make such transfers are (subject to any necessary modifications) satisfied.

(d) To agree that the above decisions shall have effect from 1 January 2017.

(e) To direct the preparation of such legislation as may be necessary.

6. To agree that paragraph 7(4) of the second schedule to proposition 28 of the States' resolution of the 29th October on Billet XIX of 2015 shall (without prejudice to proposition 5 above) have effect as if the words "or couple who have entered into a civil partnership" were deleted.

Explanatory Note

Proposition 6 of Billet d'Etat No. XIX of 2015 was negated in its entirety, which included negating the proposal to recognise same sex couples and civil partnerships for income tax purposes. As the Policy Council same sex partnerships proposals are to be debated in December 2015 (Billet d'Etat XXIII), the Department believe that it is right that the Income Tax System should progress towards a system that treats couples equally, irrespective of whether they are opposite-sex couples or same-sex couples.

The effect of this amendment would be to recommend that with effect from 1 January 2017:

- Two individuals of the same sex who have together entered into a marriage or a civil partnership shall be treated for the purposes of the Income Tax (Guernsey) Law, 1975 in the same way as a husband and wife, and that references to a marriage, or an individual who is married or unmarried, shall be construed accordingly.
- That same sex co-habiting couples with children will be entitled to claim to transfer personal allowances between themselves.

A technical amendment is also required to remove an erroneous reference to civil partnerships following the negation of the equality proposals.

It has not been possible to identify the number of couples in same sex relationships in Guernsey, to calculate the financial implications to the States of carrying the amendment into effect.

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Treasury and Resources Department Miscellaneous Amendments to Income Tax Legislation

To insert after proposition 1(j) the following additional propositions:

- 2) To prevent claims from two individuals in respect of the same child, it is proposed that the following additional condition must be fulfilled in order for a Charge of Child Allowance to be granted to an individual -

In order to claim a Charge of Child Allowance, an individual must be in receipt of Family Allowance in the relevant year of charge –

(a) on 1 January, or

(b) on the date on which Family Allowance is first claimed in respect of that child in the year in question,

whichever date is first relevant.

- 3) To agree that the Treasury and Resources Department be authorised to prescribe any matter relating to the Charge of Child Allowance (including, without limitation, any limitations, conditions, restrictions and qualifications) by regulation, whether to ensure that further incidences of double claims may be closed off at the time they are identified or otherwise.
- 4) For the avoidance of doubt, to agree that it is not necessary
 - a) for an individual to fulfil the condition that to claim a Charge of Child Allowance a claim to the allowance must have been made in the previous year of charge, or
 - b) for a member of a co-habiting couple with children, as a condition of electing that the whole or any unused part of his or her personal allowances shall be transferred to the co-habitee, to have made a claim to transfer personal allowances in the previous year of charge.

Explanatory Note

When the Charge of Child Allowance (currently £6,550) was introduced in the 1950s, it was targeted at one parent having sole responsibility for a child, whereas now it is more likely that parents will share care, and entitlement to family allowance. In circumstances where parents do not co-habit, if each parent claims family allowance for a proportion of time in a year, even for as little as 1 week, each party will be entitled to the full Charge of Child Allowance, not just for the proportion of time that they claimed family allowance.

Officers from the Social Security Department have advised that Family Allowance legislation does not allow for the payment of Family Allowance in respect of one child to be split. However, if there is more than one child, each parent may be entitled to the Allowance in respect of a different child. Parents may also be entitled to Family Allowance for only a proportion of a year, for example if a child is spending the holidays with that parent and lives with the other during school terms. Those circumstances permit an opportunity for some double claims.

Proposition 6 of Billet d'Etat No. XIX of 2015 was negated in its entirety, which included negating the proposal to require that an individual must be in receipt of Family Allowance at 1 January in the relevant year of charge. The Department proposed this element of Proposition 6 to prevent double claims for the Charge of Child Allowance in respect of the same child.

The effect of this amendment would therefore be to require an individual claiming a Charge of Child Allowance to be in receipt of Family Allowance at 1 January in the relevant year of charge, or from the date of the child's birth. It is also recommended that the Department are authorised to prescribe any matter relating to the Charge of Child Allowance (including, without limitation, any limitations, conditions, restrictions and qualifications) by regulation, to ensure that further incidences of double claims may be closed off at the time they are identified. For the avoidance of doubt, granting a delegated authority to the Department to make Regulations to address any future abuses identified would **not** empower the Department to abolish Charge of Children Allowance

On average there are 200 new claimants for the Charge of Child Allowance each year, at an average cumulative cost of £150,000 per annum. The number of those claims that are made in respect of the same child have not yet all been identified, therefore it is not possible to quantify the revenue that would be raised by carrying the amendment into effect.

There may also be a minimal administrative saving for the Social Security Department, as they would receive fewer requests to split Family Allowance payments amongst parents annually, just to enable each parent to be entitled to claim a Charge of Child Allowance.