

STATES OF JERSEY



TAXATION POLICIES: A TRANSPARENT ENQUIRY

Lodged au Greffe on 9th March 2004
by Senator S. Syvret

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

that before asking the States to consider its taxation proposals the Finance and Economics Committee be required, in co-operation with other Committees of the States and States members, to undertake a transparent enquiry into the taxation policies of the Island, and specifically –

- (a) to commission and make available to all States members an independent risk assessment of the Committee's tax proposals with particular reference, but not limited to, the likely acceptability of the proposed rate of 0% corporation tax to the European Union and the OECD over the medium and long term;
- (b) in co-operation with other Committees of the States to investigate and report upon the likely social and economic impacts of the taxation proposals contained in the Finance and Economics Committee document "Facing up to the Future", with particular reference, but not limited to, the effects upon –
 - (i) individuals and families across both income and wealth spectrums,
 - (ii) the cost of living in the Island,
 - (iii) the labour market and employment trends,
 - (iv) local businesses,
 - (v) population trends,
 - (vi) States' income,
 - (vii) the provision of services by the States, and the likely future role of 'user pays charges';
- (c) to produce and publish a strategic analysis of the risks, effects, opportunities and economic alternatives faced by the Island in a potential post-financial services industry future, such analysis to include positive strategic proposals for the community should such an outcome occur;
- (d) to produce and make available to all States members a list of all reports, advisory notes and analysis produced either in whole or in part at public expense, concerning taxation and economic issues during the last 10 years;
- (e) to produce and publish a plain English description of all tax planning/avoidance mechanisms and devices available under the present taxation regime, such description to include, as far as possible, an estimate of the tax foregone;
- (f) to produce and publish a plain English description of all tax planning/avoidance mechanisms and devices that might be available under the proposed regime, such description to include, as far as possible, an estimate of the tax potentially foregone;
- (g) to produce and publish a detailed examination of the opportunities for applying wealth taxes, including, but not limited to, capital gains tax;
- (h) to produce and publish a detailed analysis of the fiscal impacts and opportunities presented by the Island's accommodation industry, such analysis to include –
 - (i) a detailed consideration of the flow of public money into the accommodation industry,

- (ii) a detailed description of the tax planning/avoidance mechanisms available to and furnished by the accommodation industry, such description to include, as far as possible, an estimate of the amount of tax revenue foregone in unlimited interest tax relief to activity within the accommodation industry,
 - (iii) a detailed examination of the opportunities for applying capital gains tax to the accommodation industry,
 - (iv) a detailed examination of the opportunities for applying development taxation to the accommodation industry,
 - (v) a detailed examination of the opportunities for applying commercial property taxes to the accommodation industry, and such examination to take into consideration potential reforms to the parish rates system,
 - (vi) a detailed examination of the opportunities for applying a Land Valuation Tax, and such examination to take into consideration potential reforms to the parish rates system;
- (i) to produce and publish a detailed examination of the opportunities and effects of potential taxes and charges upon the labour market, such examination to include, but not be limited to –
- (i) payroll taxes upon employers, taking into account potential sectoral variations,
 - (ii) a training levy, taking into account potential sectoral variations,
- with such examination to include the potential reform of the Social Security system;
- (j) to produce and publish a detailed examination of the opportunities and effects of introducing sectoral taxes, such examination to include, but not be limited to, utility taxes;
- (k) to produce and publish a detailed examination of the potential opportunities and effects of environmental taxation;
- (l) to produce and publish, on the basis of both existing information and information produced as a result of the above proposals, a full menu of all taxation options to facilitate informed public debate.

SENATOR S. SYVRET

REPORT

From time to time political discourse in the Island is gripped by issues that seem of great significance at the time. Occasionally the subject may be a single issue, the apparent significance of which can quickly fade. With other subjects, the issue may be of more lasting importance to the community; the process of reforming our system of government may fall into this category. Yet even that subject, consuming as it has vast amounts of political time and effort, almost pales into insignificance compared to the future of the Island's economy.

The security and confidence people have in their lives, for their families and subsequent generations, depends upon their financial security, which in turn depends upon the economy. This is certainly reflected in public interest. Few subjects can ignite impassioned public concern as surely as matters of money.

Since the publication of the report of the Finance and Economics Committee, and the accompanying report by consultants, 'OXERA', I have discussed tax and spend issues with people from all parts of the community – parents, students, professionals pensioners, working people from all walks of life. What I have found most striking when speaking with people is their shared perception – admittedly expressed in different ways – that we, that is the States and the broader community, don't fully understand the issues; we don't really know what is happening and we're not in a position to take a sober look at all of the possibilities facing the community. And that perception is accurate.

I have spoken to people working in the finance industry, all of whom have expressed some degree of concern at what is being proposed, sometimes for differing reasons. Virtually all of these conversations have involved people asking me what I – and my fellow States members – make of x or y possibility? What do we think of doing A versus B? What analysis has been undertaken into this or that scenario?

The shocking truth is that I, along with most other States members, am simply in a state of virtual ignorance when confronted with these types of hard questions which go to the very heart of the future of our community – its ability to survive economically.

Can it be acceptable that, when making the most significant changes to Jersey's tax structure since the introduction of income tax in 1928, most members of our government, upon whom our community are depending to make the right choices, could not honestly begin to speak in an informed way about most of the issues raised in this proposition or the Finance and Economics Committee's proposals? It is not acceptable.

The extensive proposition above represents an amalgam of the ideas, fears, questions and concerns put to me by Islanders over recent weeks, as well as some thoughts of my own. It will perhaps be argued that the tasks required by the proposition are extensive and perhaps therefore too demanding. It simply cannot be so. Surely much detailed work relating to the very questions posed in the proposition must have already been undertaken? How else can such a narrow set of proposals as the preferred option of the Finance and Economics Committee be so confidently espoused, if not from a position of great knowledge? **If these questions and issues can occur to many people from all parts of our community, the Island's government cannot continue without addressing them. To do so would be to willingly embrace a state of ignorance whilst making the most important decisions faced by the community for many decades. We cannot proceed on that basis. The proposition requires the Finance and Economics Committee to work on these tasks in co-operation with other States Committees and States members. Only by embracing such teamwork and co-operation can we fully address this major challenge.**

I address each part of the proposition below.

(a) A RISK ANALYSIS

There is no evidence in the furnished documentation that a detailed risk analysis has been undertaken. Have representatives of Jersey sat down with representatives of the European Union and the Organisation for Economic Co-operation and Development and spoken with them? Have we put our proposed 0%/10% structure before them and asked if it is likely to satisfy them in the *medium and long-term*? We know from recent communications that representatives of Jersey, Guernsey and the Isle of Man have been in detailed negotiations with the E.U.

Commission's legal advisers concerning the status of Protocol 3 in the context of the proposed new European Constitution. If this type of detailed negotiation can give us long-term security as far as our present Protocol 3 rights are concerned, has there been a similar negotiating process concerning 0%/10%? If so, what was the outcome? What is the long-term prognosis? If such negotiation has not taken place, why not?

It seems essential that the European Union must accept that it meets their requirements that a Jersey company owned by a Jersey person be taxed differently from a Jersey company owned by a non-Jersey person. If the E.U. does not accept this position – then the entire scheme falls flat on its face. After all what's really the difference between these proposals and that which prevails now, when Jersey people pay more tax on Jersey companies than non-Jersey people do?

Having spoken to people in the finance industry, the more optimistic of them imagine that the 0%/10% proposals will keep the wolves of external pressure from our door for up to 10 years. The less optimistic give it 5 years. Where is the risk analysis? There is a real risk that growing international pressure upon what are claimed to be "harmful tax practices" will eventually dramatically reduce the scope and scale of the finance sector. The Democratic candidate for President of the United States, Senator John Kerry, has publicly promised to crack down on Britain's tax havens. The Massachusetts Senator is known to take a tough line on 'offshore' activities, promising to tackle the British overseas dependant territories of Bermuda and the Cayman Islands within 500 days of taking office. Whilst some may not perceive this as a particular threat – at this time – to the Crown Dependencies, the international trend is plain.

And what are we to make of the supposed "20% means 20%" rule robustly espoused by the documents in certain sections, when other sections freely accept that "20% means 20%" won't be the deal faced by the particularly wealthy with their negotiated settlement arrangements? What are professional individuals and couples who will be dramatically hit by the proposals to make of this outcome? What risk assessment has been made of the social and labour market impacts? Will it be the case that those hit by the "20% means 20%" rule will leave the Island, or is it in fact anticipated that the rule can be avoided in order to keep those key people whose services are essential?

What of the impact of the regressive and inflationary nature of many of the proposals? Already high-street prices are generally higher than the Isle of Man, and they have a 17.5% VAT rate. Has recent research been done as to why our prices are *so* much higher? If not, why not? **Even if it were proven that the Island's market could in fact absorb some form of sales tax, would not its introduction have to wait until the Competition Law had been introduced and its capacity to reduce prices had been observed and proven?**

Given that inflation has long been acknowledged as a significant problem in Jersey there is every likelihood that the introduction of a sales tax will have a higher inflationary impact than indicated in the reports. No attempt appears to have been made to *accurately* assess the cost burden upon small businesses of the introduction of a sales tax. It is important to recognise that a General Sales Tax (GST) is not the same as VAT. As a consequence it could really increase costs for local businesses. Nor does there seem to be any serious appraisal of the costs of administering this tax both by the States and by business, to determine whether a 5% rate would actually contribute serious revenue, and at what cost, to the States.

Nor has any *serious* attempt been made to analyse the impact of the introduction of such a tax upon the Tourism industry which has already been decimated by, amongst other factors, inflationary pressure in Jersey, making the Island an expensive destination. Given this impact, how seriously are we to take the asserted wish to broaden the economic base of the Island? This is without even considering the highly regressive nature of many of the proposals and the consequent impact upon ordinary people. This last point has to be of particular concern, given that we already face central London living costs, and it is simply impossible to guarantee that – once the psychological barrier of introducing such a tax has been overcome – we will not eventually find ourselves with a 17.5% rate, matching that of the U.K., just like the Isle of Man.

Given there are a variety of down-sides to the proposals, surely the least we must demand is a thorough risk-analysis which assesses whether the measures have any likelihood of actually working in the long-run?

(b) THE IMPACT OF THE PROPOSALS

The preferred option of the Finance and Economics Committee would clearly have a number of very significant impacts. Some of these may be obvious; others less so. Would it really be acceptable for the Island's government to agree to the introduction of such dramatic changes in its tax policies without an analysis of the impacts and effects of such policy changes – especially as many of them will be irreversible?

Much add-hoc analysis and comment from different quarters has already identified some of the likely impacts and effects, but we cannot rely for guidance on this most important of subjects upon fragmented, individual attempts to assess specific effects. The community of Jersey already faces central London living costs – and these are inescapable in an island environment where we cannot commute to a cheaper region. **What effect will the regressive nature of these proposals have upon the less well-off in our community? Economically, how many more expensive state interventions will be required to enable ordinary working people to simply live in their Island?**

The issue is clear; a variety of effects and impacts will flow from these – and in fairness, any other – significant changes to our tax structure. The Island's government simply has no choice other than to assess and quantify as far as possible the consequences of such policy changes.

(c) AFTER THE GOLD RUSH

Whatever the future may actually hold, there is clearly a very real risk that the financial services industry could cease to be a significant part of the Island's economy. Even some people in the industry will privately acknowledge that its days may be numbered. There are several, clearly identifiable factors that could drive 'offshore' to near extinction as far as Jersey is concerned.

The most well-known of these is external pressure at a national or international level. The Island has been extensively criticised in the past by authorities in other jurisdictions for allegedly facilitating money-laundering. Whilst the Island does now co-operate on this matter with other authorities, and has had in place for some time now 'all crimes money laundering legislation', *still* external criticism and pressure remains, for new reasons. Now the target is "harmful tax practices". The OECD and the European Union have both demonstrated their hostility to what they perceive as "harmful tax competition". A major factor in driving the 0%/10% proposals has been the need to attempt to satisfy the E.U. requirement of equal treatment of resident and non-resident entities. However, as explained previously, there is a very real possibility that the 0%/10% proposal will not placate the E.U. Indeed, it seems likely that the only reason the 0%/10% proposal could be said to 'legally' meet the E.U. requirement is poor drafting and lack of foresight on the part of the E.U. team who prepared their position document. Let us be clear; the objective of the government forces behind the E.U. pressure is to stop what they perceive to be a haemorrhaging of tax revenue to offshore jurisdictions. They are most unlikely to forego this objective simply because of some legalistic jiggery-pokery on the part of the Crown Dependencies.

Competition with other jurisdictions could render the whole exercise futile. We are already engaged in a race to the bottom with Guernsey and the Isle of Man. Competing against other jurisdictions on this basis is clearly a game that none of the communities can win. Where does the concept of tax competition end? How are we to know that 0% will satisfy our clients? How long before the "look through" provision seems excessive in terms of 'operating costs' in comparison to other jurisdictions? **It can only be remarked that it is quite extraordinary and bizarre that there appears to have been no attempt by the ruling elites in any of the 3 Crown Dependencies to engage in a non-competition treaty or convention. The 0% race to the bottom can clearly have only one outcome and that is economic harm to the 3 communities, greater social hardship, a significantly greater transfer of the tax burden on to the shoulders of ordinary people – and, of course, a significant reduction in real tax-take from Island businesses, and the elites who own them due to greatly increased opportunities for tax planning. Though, naturally, this last outcome is purely co-incidental.**

Another factor that must be faced is the growing international influence of anti-offshore campaigns. A number of highly respected NGOs are now openly critical of 'offshore' facilitated tax avoidance. For example OXFAM has produced an extensive report identifying a vast cash loss from developing countries to offshore centres. They claim that the ability of corporations and corrupt elites to use offshore to "launder profits" is contributing dramatically to the plight of the world's poor. This pressure can only grow as it is not only an issue to developing

countries. With aging populations and ever more costly social infrastructure, developed nation states are increasingly aware of the need to capture tax revenue for their own populations, especially when having to contend with an international trend to lower taxes due to the mobility of capital and globalisation. It may simply be the case that nations and blocs such as the E.U. will *simply have no choice* other than to shut out of the game small jurisdictions that specialise in tax avoidance. And no matter how much we may correctly protest that they're not applying a level playing field, they are unlikely to be deflected. We can get some measure of the growing international hostility to offshore from the fact that the Democratic candidate in the U.S. Presidential elections John Kerry, has made anti-offshore commitments as part of his election platform.

When considered in this light the 0%/10% proposals look more and more like a short-term palliative measure and less and less like the required structural re-configuration of the Island's tax structure. If there is a real risk of the 0%/10% proposals doing little more than buying us a few years' breathing space, have we attached sufficient weight to the downside of the proposals? Have we taken a robust enough view of the possible alternatives? Especially when such alternatives may prove longer lived?

Extremely unpalatable as it may be, we simply cannot ignore a possible future without the financial services industry. What would such a loss mean to the community? What would be its impact? How would we pick up the pieces? How would we move on? Quite obviously, the foundation of the Island's economy is the financial services sector, if that sector were to go, the resultant significant unemployment would lead to emigration and a crash in the accommodation industry, the second tier of the Island's economy.

So what is of particular importance is the question of what we can do now – whilst the going is good – to prepare, whilst we can, for what may be an economic meltdown, and to perhaps adopt policies in the present, that will ameliorate some of the harm.

It is the purported aim of the Finance and Economics Committee to broaden the economic base of the Island. We must ask how serious an objective this is when the tax proposals seem geared entirely to the interest of wealth-holders, the finance sector and big businesses, and to be actually regressive and harmful to the concerns of small businesses and grass-roots entrepreneurship. The policies advocated by the Finance and Economics and Policy and Resources Committees would actually be counter-productive and damaging to the Island's post 'offshore' opportunities and chances. Our culture, our quality of life, our heritage, our environment – the beauty of our Island, will be further damaged and eroded by these short-term 'cash in while we can' policies. The more our unique selling points are eroded the less likely we will be able to build a future based upon tourism, culture, arts, our environment, agriculture, international events and festivals and education. **If we do not both finally arrest the damage being done to the Island, and begin to gather wealth from capital rich activities in the Island to invest in our future, we will clearly be acting against the interests of our community beyond the next decade.**

Real opportunities exist for real economic diversification, if only our elites would accept it. The recently published 'Draft Culture Strategy', an excellent, bold and imaginative document, states at one point –

“The Finance Industry. This is suffering turbulence post 9/11 and as a result of the ending of the dot com boom. The faltering of the industry, and its subsequent rationalisation, has led to decreasing sponsorship for cultural activities. **The contraction of the industry and the recognition of the over-dependence of the Island on this one sector, provides the opportunity for the development of the commercial creative industries. For the near future, these are likely to be small scale but will help to diversify the Island's economy. They will also attract other business sectors.**” (My emphasis)

Should not our policies be geared, at least in part, towards developing this kind of future for the Island? Another sector we must consider is the development of a Jersey University. Yes, at present this may seem a distant objective. It would require dramatic investment, expert strategic development and the development of St. Helier as a 'campus town'. These developments would require an influx of staff and students, which at present may appear problematic from a population perspective – but if we find ourselves experiencing a population decline in the event of a serious contraction of the financial services sector, we may be extremely glad of such an avenue of replacement. With the attractiveness of the Island, its weather, its beaches and nightlife, Jersey could become an extremely attractive destination for a couple of thousand students to spend 3 or 4 years doing their higher

education. The development of Jersey University would of course generate a significant range of other business opportunities in the Island.

(d) INFORMED DECISION-MAKING BY STATES MEMBERS

I looked around the States Chamber during a recent Sitting and asked myself ‘of the 53 members– the people whom have the responsibility of making these most vital decisions on behalf of our community, how many of us will be fully informed? How many States members will have undertaken detailed study of the research prepared at public expense by our departments? Come the day of debate, how many of us will be able to pronounce on these issues with anything approaching real authority and understanding?’ **The answer to this question is terrifying.**

The plain fact is that most States members have been, either by accident or design, kept out of informed involvement in the policy formulation process. **Private individuals from within the finance industry have been given privileged access to the policy formulation process in a group known as FISBAG, in ways that exceed the involvement of most of the public’s elected representatives, who, by way of contrast, receive the occasional PowerPoint lecture.**

I have no expertise in this field. I have limited knowledge and I have had little success in gaining unencumbered access to all of the information – despite repeated requests. Yet I get the impression that my understanding of these issues, limited though it is, exceeds that of a majority of our elected representatives. Yet I, if asked for an honest appraisal of my understanding of these subjects, would have to admit it is extremely limited. **Can we rush into these decisions without making some effort to ensure we are as informed as possible? Simply, the answer is no. Frankly, a vote against these proposals is a vote for ignorance; a vote for blind paternalism and a vote for ill-informed and incompetent government.**

(e) TAX PLANNING AND AVOIDANCE UNDER THE PRESENT SYSTEM

It is probably fair to say that the Island’s economy, its tax and spend policies – and the consequent impact upon the lives of people are the most important political issues the Island has faced for many decades. The present attempt to address our taxation policies represents the most significant change in Island tax law since the introduction of income tax in 1928.

Given that those of us who profess to govern the Island do not possess a party political mandate for a particular set of policies, *informed* public consent for major policy changes is to be greatly desired. Accepting that, the present process embarked upon by the Finance and Economics Committee is manifestly woefully inadequate. How can the community be meaningfully engaged in an informed debate concerning taxation options when most ordinary people have no or little knowledge of the variety of tax planning and avoidance devices that are available to, and commonly used by, people in different wealth brackets to avoid taxation? How many people understand whether different tax planning and avoidance opportunities are available to partners in a partnership as opposed to employees? Should we not have some quantification of how much tax has been foregone by the States over the decades through our previous – and frankly disgraceful – acceptance of the “boundless” opportunities to avoid tax available to company directors? Many of these devices may well be important to the Island’s economy. That might be so, but we must at least have an informed discussion concerning them. Simply asserting that we don’t want to look under that particular rock because the rich may leave, just won’t wash anymore. **Ordinary people are leaving Jersey simply because they can’t afford to live here.**

Publication of information on known current tax planning and avoidance mechanisms and devices, possible abuses of such, and a quantification of their impact is, and must be, an inescapable prerequisite of informed debate.

(f) TAX PLANNING AND AVOIDANCE UNDER THE PROPOSED SYSTEM

The furnished reports suggest that Jersey companies should be subject to 0% corporate tax rate in future. This proposal dramatically intervenes in the relationship between corporate profits and salary payments and immediately suggests that people will wish to retain profits in companies for two reasons –

- 1: The tax on profits will be lower than the tax on salaries paid to owners.
- 2: There is incentive to keep profit in the company and then sell it, heavily laden with cash, to realise an apparent capital gain which will actually represent accrued income but which will be deferred income in all but name.

OXERA and the Finance and Economics Committee imagine they have got around this problem by proposing that for companies owned by Jersey resident people the income of the company will be added to the earnings of the shareholders and will be taxed as if it is part of their income. On the face of it this seems – at best – an extremely naive proposal given the fact that the existing tax structure leaks like a colander so we need not strain very hard to imagine that any new opportunity to avoid tax will be used maximally. **The opportunity these proposals create for tax “planning” seem enormous.**

It is feasible that the potential tax loss from the scheme could be very dramatic. Maybe £40 million of income tax could be lost to the States a year by reason of local Jersey companies and wealthy families transferring their ownership into offshore discretionary trusts in other jurisdictions and by then using various, quite easily conceivable schemes to convert income into capital gains, which when remitted to Jersey would be tax-free. In this way the entire proposed arrangement for adding income of companies to that of their owners could be avoided.

It's worse than that though. The self-employed are paying £40 million of tax a year according to the 2004 budget and they might see that by incorporating their businesses and going offshore using the devices available in other jurisdictions, they too could save substantial amounts of tax. **This added to the possible £40 million company loss brings the total possible tax planning loss to £80 million a year. And this, I stress is on top of the £100 million a year already foregone.**

Of course it can be argued that the de facto owners of these companies will need something to live on so the trusts that own the shares in what used to be their companies will now have to pay them something. Under the Jersey tax code this might mean recipients are taxable on that payment in Jersey. This is true, but only partially so. Because Jersey does not have a capital gains tax, if the trust generates a capital gain, and the distribution from the trust is structured in the form of capital, it would not be liable for tax in Jersey.

It is quite possible to envisage other scenarios. Jurisdictions which have lower, or even 0% rates of personal taxation, could suddenly find themselves doing a roaring trade in welcoming expatriates from Jersey. The erstwhile Jersey resident company-owner will be paying tax – if paying anything – in their new host jurisdiction while their company pays 0% in Jersey. It is said that only death and taxes are inescapable. Well, we seem to be defeating the tax part of that equation.

I, in common with most States members, am no expert on taxation. But we have the responsibility to make these profound decisions on behalf of our community. It would be the grossest irresponsibility to make these decisions in a state of ignorance. **Before the new tax regime is agreed, we must avoid the mistakes of the past and be aware of every tax planning and avoidance device and mechanism that may be available under the new proposals.**

(g) TAXING WEALTH AND CAPITAL GAINS

The Finance and Economics Committee document asserts that “A general wealth tax or capital gains tax would not be consistent with Jersey’s position as a location for international financial services, and could seriously harm Jersey’s international reputation.” This assertion rings extremely hollow, in the light of the fact that it is accepted international practice to have a different capital gains tax regime depending upon resident or non-resident status. Thus the E.U. requirement for equal tax treatment for localised -v- non-localised clients simply would not apply. When considered in this light, a carefully structured capital tax regime could appear to be an attractive option given the current international pressure on the Island. Clients of the Island’s financial services industry could continue to receive a competitive treatment, whilst capital gains made by on-Island individuals and entities would attract the relevant tax – this being entirely consistent with international practice – though obviously this policy would be much less attractive to local business and land-owning elites. Such a policy may require some anti-

avoidance legislation to capture the local tax, but probably a good deal less than the 0%/10% proposal. Indeed, in respect of capital gain made in the highly developed local accommodation industry it would probably be difficult to avoid if some changes were made to the rules governing property ownership. I personally would not favour a capital gains tax on profit made on the sale of the principle place of residence, although such a tax upon the residences of the super-rich may be a good way of ensuring they contribute more to society. But we need not go as far as capital taxing ordinary households in any event. There is quite clearly so much speculative and commercial property transaction in the Island that a capital tax on this activity may, by itself, become a highly useful component in the Island's tax system.

I am happy to concede that, as a non-expert in these matters, there may be reasons why the suggestions above may not be so easy to apply. I can, however, be absolutely certain of this much: The glib dismissal of such an approach in 4 paragraphs, after at least 3 years' work, simply won't wash.

“INCOME” OR WEALTH STREAM

Could it be that the hostility to wealth and capital taxes has, in fact, more to do with local elites than the harsh fiscal reality facing the community? Let's face it, if you happen to be in the fortunate position of having a significant wealth stream – let's not call it 'income' for the avoidance of confusion – and you ask an accountant to minimise your tax burden, one of the first things they will do is engineer your affairs so that the wealth stream becomes just that – not income – but instead a capital accrual and – hey presto! No tax liability because we don't have capital gains tax in Jersey. These types of capital accrual opportunities have, incidentally, been readily furnished by the Island's accommodation industry over the decades.

Avoiding tax by finding ways of rolling up income into a capital gain has long been the 'Great Game' of tax avoidance in Jersey. There are a large number of 'wealth-holders' in Jersey (the wealthy immigrant 1(1)(k)s are, frankly, merely the tip of an iceberg and the pressure on 1(1)(k)s is simply to *not* do what the existing local rich do). The majority of these wealth-holders [company owners, landlords, significant property owners, professional classes with saved wealth] will have arranged their affairs to maximise (untaxed) capital gain and minimise (taxed) income. **In the complete absence of any, even slight attempt to tax this wealth gain, any talk of the proposals of the Finance and Economics Committee being balanced or fair can be seen for the transparent nonsense that it is.** Take for example the graph 'Figure 1' on page 6 of the Finance and Economics Committee report. The accompanying caption states: “The above chart indicates that only around 10% of household income is available to tax above a (gross) household income threshold of £80,000. **As a result, tax measures that are exclusively aimed at households with high incomes do not yield particularly large amounts of tax revenue.** The Committee has taken income distribution into account in formulating its preferred option.” **It is important to note here the very particular use of the phrase “income available to tax”. What if we were, for the purposes of this exercise, to substitute the word “wealth”, or perhaps “capital accrual” or perhaps “wealth stream not available to tax under the present regime”? If we then considered that in fact under new measures that did bring these wealth streams into a category available to tax, aimed at households with high “wealth” or “wealth streams”, might we then get a rather different picture of possible taxation options?**

There is another – altogether less palatable – yet profoundly important reason why the Island must embrace some form of wealth and capital taxes whilst it still can.

ASSET-STRIPPING THE COMMUNITY

The Island's economy is virtually entirely dependant upon the foundation of the financial services industry. Most of the remaining successful economic activity in the Island grows from it. Without its money in the Island's economy there would be precious few jobs, hence an exodus of people, a collapse in the property market, and a similar collapse in most other aspects of significant economic activity. **Such is the level of dependency upon the financial services industry, that if its scope and scale were to be dramatically reduced in the future, or even if it were to be shut down completely, the Island would undergo complete economic meltdown.**

It is to be greatly hoped that such a scenario does not occur; but if it did? **What does the Island of Jersey have to show for the 'gold-rush' years by way of an 'insurance policy'? A strategic reserve that would struggle to keep essential services running for one year.** It has been speculated, by people with knowledge of the industry,

that it may have 10 years left; at least in its present, significant form. **The Island's government must, as an insurance policy, be seeking to secure more tax income now, whilst the opportunity still exists. It has been suggested to me that businesses and individuals with capital assets in the Island, such as significant companies and/or property, will seek to, as it were, "cash their chips" in the form of capital gain generating sales of assets, now, whilst the 'going is still good'. Indeed, it has been suggested to me that that process has already begun.** If people with their finger on the pulse of business in the Island are starting to speak privately in this way, surely the time is now, that the States must introduce at least some form of capital tax. As stated earlier, it is to be hoped that such a scenario does not materialise. But should there be only comparatively few years left of "boom time", the Island's government has a duty to secure an appropriate tax-take from what may be a significant cashing-in on capital assets in the Island. Should the financial services industry go, the community would need a significantly larger reserve than that presently available to enable us to cushion the blow. **Should the States sit back and watch a potential tax income stream pass by in a welter of private capital gain in the next decade, knowing that times may become much harder for the Island's people?**

The proposals of the Finance and Economics Committee have been described to me by one Jersey Accountant as "A smash-and-grab raid. Pure and simple. These policies have been designed to suit the local rich. The supposed capturing through personal tax on the owners, of the money lost to the 0% has got to be a joke, it'll be so easy to avoid. And no capital gains tax? Well, there's a surprise!"

(h) SCOPING THE ACCOMMODATION INDUSTRY

The attitude of the States to the Island's accommodation industry has been akin to a person finding an elephant in a friend's sitting-room but only making polite conversation about their choice of curtains. Quite obviously the foundation of our modern wealth is the financial services industry. And just as obviously, the second major area of economic activity in the Island is the accommodation industry – land ownership, rentier wealth and income, property investment and speculation, development activities, the construction industry, associated mercantile businesses, maintenance industries, property financing, conveyancing, the sale and purchase of residential accommodation, the residential rental property market, the sale and purchase of commercial accommodation, the commercial rental and leasehold property market. **It is quite possible that the total economic value of activity in this sector taken as a whole over the last few decades runs to billions of pounds – and yet the Island's government has never approached it as a distinctive taxable entity in this way, preferring to pretend that it doesn't exist. How great might our reserves be if we had a sensible tax policy in respect of the accommodation industry? How much have we lost? Is it in fact the case that the Island has simply been used as a piece of money-making apparatus in the last few decades, with precious little regard for the community's long-term security?**

No analysis of the Island's economy and its taxation policies can have any claim to be taken seriously if it ignores the accommodation industry – as the furnished documents virtually have. The Finance and Economics Committee document 'Facing up to the Future' which Orwellianly does the opposite, devotes how much analysis to the accommodation industry? In just one paragraph on pages 8/9 it dismisses capital gains tax and property taxes – and that is all the attention it gets.

The OXERA report in 3 paragraphs beginning on page 16 dismisses wealth taxes such as capital gains and property taxes without further discussion. That is obviously a wholly inadequate consideration of such an important issue when the entire economy of the whole Island is under review.

The Island's government is about to make the most significant changes in our taxation policies since income tax was introduced in 1928 – and the consideration given to the second largest sector of economic activity in the Island amounts to a total of 4 dismissive paragraphs. This is simply not acceptable.

This part of the proposition and its sub-paragraphs seeks to enable us to develop an understanding of the Island's accommodation industry. Dramatic amounts of public money, principally private sector rent rebate, flow from taxpayers into the pockets of landlords. There will be other ways by which the state subsidises the industry, for example the below-cost provision of state services such as building control and planning.

The States must at last engage in a full analysis of how its taxation laws and other policies interact with the

accommodation industry. At present we grant unlimited interest tax relief on all commercial borrowings. Whilst this may be common practice in other jurisdictions, certain special circumstances may apply in Jersey. For example, the state providing an artificial subsidy, which is what this provision amounts to, is inflationary, indeed highly inflationary in a market such as Jersey's. We have recently decided to cap mortgage interest tax relief availability to home-purchasers. Yet, if you are buying to let, which is effectively engaging in a commercial venture, and which will always be inflationary in the context of Jersey's current market – you will still have unlimited interest tax relief available upon your commercial borrowings. **At the very least we should make some attempt to assess just how much potential tax take the States is forgoing through its policy of subsidising and fuelling highly inflationary property speculation.**

There can be little doubt that dramatic capital gains are made by the Jersey accommodation industry. It is only by the making of such gains that prices can have reached their current levels. Furthermore due to tax planning/avoidance mechanisms it is frequently possible for the industry to accrue its wealth in the form of capital gains which we do not tax in Jersey. Have we even attempted to assess how much capital gain is made in the accommodation industry? **It is likely that by not having a capital gain tax, perhaps specifically in the form of a property development or transaction tax, the States is forgoing many millions of pounds a year which we could be raising from speculative activity in the second major part of our economy, the accommodation industry. Instead, the Finance and Economics Committee would have us try and raise millions of pounds through regressive measures like GST raised upon the less well-off members of our community.**

The documents furnished by the Finance and Economics Committee are blithely contemptuous in their dismissal of the concept of commercial property taxes or Land Valuation Taxes. Yet, as already pointed out, the accommodation industry is the second major sector of economic activity in the Island. **The obvious great economic value of this sector must require that the Island's government at least examine its taxation potential thoroughly. The decision of the Finance and Economics Committee to virtually ignore this possibility is simply mystifying when one considers the great difficulty in avoiding or evading such taxes, and the comparative simplicity with which they could be raised in comparison with the extreme range of anti-avoidance legislation likely to be needed to prevent the 0%/10% policy haemorrhaging potential tax-take.**

(i) THE LABOUR MARKET

The Finance and Economics Committee and the Policy and Resources Committee appear to favour “growing” the economy or “expanding” the economy. This, we are told, is the answer to our problems. **This is of course code for expanding the population. Essentially, business as usual. More of the same approach that has been the de facto policy of the States for the last 3 decades.** If that policy has brought us to where we are now, why should it work any better in the future? The answer is of course that it won't if we have the same labour market conditions. If – and it is a significant if – we must expand population to stimulate the economy, we must at least ensure that we take any opportunity to consider the fiscal impacts and opportunities presented by the labour market. **Expanding the population has meant a greater demand for state services such as education, health and housing. A significantly increasing population has a financial cost and a significant environmental impact; traffic congestion, waste disposal and development of the countryside, to name but a few. Will we need another reservoir; another land reclamation site? The impacts of economic expansion simply through growing the population are clear to see; this has, after all been the undeclared policy of the States for some decades. If we must go down this path, we must ensure that every possible opportunity has been explored for payroll taxes, training levies, sectoral taxes and variably applying rates of social security charges. We must require this sector to internalise what are at present “externalities” – the on-costs to the Island.**

If we do not take the obvious opportunity to make the labour market work for the community we will simply be repeating the failed policies of the past. Of course, simply growing the population will indeed work, as it has done hitherto, for the short-term self-interests of the Island's business and rentier elites. A regular inflow of people means a regular supply of cheaper labour for your business; it means a regular stream of tenants for your extortionately priced lodging houses; inflation in the property market to maintain to your advantage over purchasers and tenants; a never-sated demand for new housing land, so you will continue to be able to look forward to a fat lump of capital when that farm land you own is re-zoned for housing development; and generally an increasing supply of customers for your shops, pubs and clubs. **Whilst such a policy is clearly extremely**

beneficial in terms of short-term self-interest if you happen to be a landlord, property-owner, shop-proprietor, or local business shareholder, it has not, as presently managed, brought medium and long-term economic security for the community as a whole. What then, are we to make of the possibility of a significantly expanded population, fuelling the financial growth of local businesses – that will now pay 0% corporate tax and whose owners will be able to avail their selves of an even greater range of tax avoidance and planning opportunities? And this whilst the States must ultimately pick up the inevitable extra costs of a larger population.

Unless we make the labour market work for the Island, the prospect of a growing population under the 0%/10% regime will produce even less lasting economic security for the community than it has done to date. If simply growing the customer and labour base available to local businesses was the path to economic security, why hasn't it worked so far? After 4 decades of this policy?

(j) SECTORAL AND UTILITY TAXES

The proposals of the Finance and Economics Committee apply, in a limited way, the concept of sectoral taxation by recommending a 10% rate of tax upon the financial services industry. Why is the concept not developed further? I have previously addressed the accommodation industry, for example. Perhaps the local motoring industry, which is extremely profitable but also imposes very significant costs upon the States, should be considered for a particular tax rate on motoring dealership franchises?

In other jurisdictions special taxes are sometimes raised from utility providers. Given that we are now beginning to see competition in some parts of the utility sector, and we may yet see privatisations, we must consider the possibilities of taxing this sector, including the possibility of 'windfall taxes'.

(k) ENVIRONMENTAL COSTS: LOCAL AND GLOBAL

Professing a concern for the environment is extremely easy; we're all environmentalists now. Yet in the present political climate serious consideration of environmental issues is seen as a rather quaint anachronism. Indeed, the most rigorous and extensive public consultation exercise carried out in Jersey produced the report 'Jersey in the New Millennium: A Sustainable Future' an extremely good report representing many months of community effort. **Yet so unpalatable was this document to the customarily dominant elites in Jersey, advocating as it did less short-term cashing in, that it was immediately shelved at the very back of the cupboard. Instead we now have the comparatively paltry "Imagine Jersey" process, designed and engineered to 'manufacture consent' for policies that more suit the short-term interest of Island elites.**

Where is our communal – and irreplaceable – asset of our environment to be found in our tax and economic policies? Virtually nowhere. We still allow companies and partnerships to include excessive and unnecessary vehicles as legitimate costs against taxation. How much sense does that make in an island of limited space and frequent urban traffic jams? Is such a policy responsible government, when our children have one of the worst rates of asthma incidence in the U.K.? **Unpopular though it may be, the burdens of leadership must require us to take a hard look at the fiscal impacts and opportunities of Jersey's manifestly excessive motoring industry.**

What will be the effects of yet more, short-termist 'go for growth' policies upon both the urban environment, in which most of the Island's poor live, and on the countryside, which is, regrettably, viewed by many simply as a capital asset waiting to be cashed? The policies of the last 30 years have clearly had a significant impact upon the Island's environment. **Some will claim that a good environment has a cost, and that the wealth-generating activities of the economy will bring environmental improvements. If this were a remotely credible claim we would not have to witness the disgraceful failure of the States to carry out the Island's millennium project of creating a new Town Park in the heart of the most densely populated, deprived and poorest part of the Island.**

Although this will seem an eccentric and irrelevant "externality" to some, we must also consider our impact upon the global environment. We produce more garbage per capita than New Yorkers and we have a liking for gas-guzzling cars of extremely limited value and purpose in a small island. Yet where is any sign of a meaningful

carbon tax? Global climate change is a threat to us all. Indeed, some scientists predict a rapidly de-stabilising global climate in which we may see – in our lifetimes – shocking changes in weather patterns; changes that may even de-stabilise society. Should we not at least take a serious look at whether our tax policies can be considered remotely responsible in an international context, especially, as an extremely wealthy society, we are better placed to do something about our environmental impacts than the world's poor?

(1) A FULL MENU OF OPTIONS FOR INFORMED PUBLIC DEBATE

Politicians like very much to be able to claim public support for their preferred policies. This is why the opinion management industry features so strongly in modern politics. But could we really even begin to claim public support for a particular set of tax proposals unless and until the public had access to the full menu of all taxation policy options? Nobody wants to pay more tax, yet taxation is the price we pay for living in a decent society. The Island finds itself in a situation where the reality is that we are all likely to have to pay some additional form of taxes. **The community has a right to see the full range of options and be satisfied that those increasing tax burdens which may be necessary, are being apportioned in a just manner.**

SUMMARY

The political reaction to this proposition is of course predictable. I could write most of it now. The most obvious objection will be that the task is too large and will take too much time. This objection is easily disposed of. The Finance and Economics Committee, taken with its predecessor, have been working on the present fiscal review for at least 4 years. Prior to that, the Fiscal Review Working Group worked for some years on taxation matters. The issues and questions raised by the proposition are not novel or obscure. These are questions that have readily occurred to people who have contacted me in recent weeks, along with some of my own concerns. Surely much – if not all – of the relevant studies and data must already be available, with comparatively little remaining to be investigated? For if this is not the case, then what has actually been undertaken during the last 6 or so years? And how could Finance and Economics be quite so certain in their policy preferences if the issues raised in the last few weeks by people across the community, issues which are reflected in the proposition, remain to be addressed?

Financial and manpower statement

There will clearly be some additional financial and manpower requirements in producing the work required by the proposals. However, given the vital importance of the work, such outlay is essential. Provided that a thorough and comprehensive tax structure is put in place, the many millions of pounds produced would far outweigh any initial investment.

It should also be pointed out again that – provided successive Finance and Economics Committees have undertaken their work thoroughly, most of the studies required ought to be largely available already, perhaps simply requiring some minor expansion and up-dating.