

# STATES OF JERSEY



## FOREIGN TAXES AND FREIGHT COSTS IN PRICES OF GOODS SOLD IN JERSEY (P.89/2010) – COMMENTS

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Presented to the States on 19th July 2010  
by the Council of Ministers

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## COMMENTS

### Introduction

P.89/2010 is flawed in that it fails to recognise that Jersey retailers and consumers operate in a free and competitive environment which is increasingly enhanced by access to an international marketplace accessed through the Internet. Jersey consumers buy in a competitive market and retailers set their prices based on the consumer's willingness to pay. If Jersey retailers decide to price goods at VAT-inclusive levels, Jersey consumers, who have alternatives in a competitive market place, can and do exercise the option to shop elsewhere.

In addition the States, through its funding of Trading Standards, the JCRA's oversight of the Competition (Jersey) Law 2005 and the Jersey Consumer Council, devote significant resources that provide significant protection for Jersey consumers to prevent any form of mis-selling, abuse of monopoly or excessive pricing. The additional resources that would be required to satisfy P.89/2010 represent a clear and unnecessary duplication of public funds.

Finally, attempting to change market behaviour by punishing and penalising individuals or businesses for charging high prices, as the Deputy's Proposition suggests, is not the purpose, or a legitimate use, of a taxation system, particularly when alternative market-based options exist.

### Part (a)

P.89/2010 requests the Minister for Economic Development to require Trading Standards to investigate consumer pricing complaints and monitor locally priced goods to establish whether they are incorporating into the price of goods sold locally any foreign taxes, or component of foreign taxes, that are not applicable to goods exported to Jersey, or incorporating into the price a shipping cost that is greater than the true cost of the shipment of the goods to the Island. There are two direct and one implied issue within Part (a)

#### 1. Action under existing legislation

At present, Trading Standards investigates consumer pricing complaints during the course of normal business under existing legislation. Investigations are undertaken on the basis of complaints received by consumers as and when they arise. Therefore, in essence this first element of P.89/2010 is a non-issue.

P.89/2010 effectively suggests that the Economic Development Department should duplicate the role of the JCRA, which has the powers and abilities to investigate cases of excessive pricing. This would add to the Economic Development Department's expenditure, needlessly burdening the taxpayer with extra costs at a time when controlling spending and considering options for raising taxation are critical issues.

#### 2. Price control vs. market forces as an effective control

With regard to the request of the second element of Part (a) to "monitor locally priced goods to establish whether they are incorporating into the price of goods sold locally any foreign taxes, or component of foreign taxes, that are not applicable to goods exported to Jersey, or incorporating into the price a shipping cost that is greater than

the true cost of the shipment of the goods to the Island”, this request would require fundamental changes to the powers, mandate and budget of Trading Standards as, at present Trading Standards does not have any mandate, power or approved headcount to provide a service to investigate prices charged for goods in the Island.

In addition, as Government policy neither does nor is planned to control prices, there would be little point in a regulatory body monitoring such prices even if it were to have the legislative powers, mandate and resources so to do. It should be noted that the Jersey Consumer Council receives an annual grant from Economic Development and a significant part of this is paid to a consultant to carry out price gathering/monitoring of Jersey retailers. These prices are published from time to time to enable consumers to make informed purchasing decisions.

In 2008, Price Marking legislation passed by the States came into force at the same time as GST was implemented. It places a legal requirement on traders to price their goods inclusive of GST, apart from some exceptions. This is to ensure that in trader-to-consumer transactions the price displayed is what is paid. It also enables accurate informed price comparisons to be made by consumers within ranges of goods. Substantial powers are available to Trading Standards in cases of persistent non-compliance. At the heart of this issue is the fact that consumer preference has primacy. If a local trader has a policy of pricing goods to include taxes from elsewhere (e.g. UK VAT) and this becomes uncompetitive, the laws of supply and demand will act to reduce prices.

### **3. Resource demand**

The report accompanying P.89/2010 calls for significant additional resource and powers for Trading Standards. As such, it has implied consequences for the Economic Development budget.

If the proposition was passed by the States, Trading Standards would not be able to employ any new staff under current resource restraints as no vacancies exist in the section or indeed in Economic Development. Therefore, any work would have to be outsourced to an appropriate outside agency, such as an accountancy practice. If a cost/management accountant is to be given free access to hundreds of company accounts to determine whether or not excess profits are being made, that person will need substantial powers to demand what is commercially sensitive information. Therefore it is certain that intrusive legislation will be needed to enable this.

No budget currently exists for this. To provide such resources, funds would have to be diverted from an already constrained Economic Development Department’s budget at a time when we are seeking to make the best use of limited resources. Given the comments above regarding the action of market forces, dedicating resources to this task would not represent fair value for taxpayers’ money.

If the Deputy is really concerned about the pricing behaviour of certain businesses in the Island and has evidence that they are exploiting their market position, then he would be better to make a complaint to the JCRA.

The Council of Ministers is committed to keeping the cost of living under control, but agree the best policies to do this are through allowing competition to prevail in the marketplace, having a pro-active competition authority supported by an extensive competition law and a strong consumer voice. The Jersey Consumer Council (JCC) is

doing an increasingly effective job in making sure that the consumer voice is heard. Following consultation with the Chairman of the JCC, the Minister for Economic Development will be lodging a report and proposition in early course to renew the mandate for the JCC and ensure it can increase the efficacy of consumer representation in Jersey.

In addition, there is good evidence to suggest that the “Fair Play” campaign run by the Jersey Evening Post in past years has had a significant impact in those areas of the market featured in the campaign. It is hoped that, with the encouragement of the Economic Development Department and the JCC, the JEP may consider re-launching this campaign.

## **Part (b)**

Part (b) proposes a fundamental change to the Island’s corporate tax regime, which itself is currently under review as part of the Fiscal Strategy Review.

The Council of Ministers has obtained detailed advice from the Comptroller of Taxes that indicates:

The charge to tax in Jersey is done by Schedule. Only two such Schedules exist –

- Schedule A which charges to tax all income arising from property and property development in Jersey.
- Schedule D which charges to tax income and profits arising from trades, etc., and employments, as well as from various other sources of income such as bank interest.

Under this system, tax is only charged where a source of income or profits exists. The Deputy’s Proposition does not conform to this basic ‘source of income’ canon and tenet of the existing Income Tax Law. This is because what the Deputy is proposing is that, on the occurrence of a particular event, i.e., if a Jersey business incorporates any foreign taxes in its pricing structure, such as UK VAT, then the Income Tax Law should be altered so that this one event alone brings a person within the charge to Jersey tax. This event-based charge to taxation is a major departure from the existing charging provisions. It is likely that if such an event-based charge to taxation is introduced, unintended and unforeseen consequences may arise.

There is also a potential problem as regards Human Rights. Whilst the European Court of Human Rights allows a considerable degree of latitude to Governments to set their own taxation policies to meet their own particular social and economic circumstances where there is a well founded, objective, legitimate and proportionate policy aim, introducing such an event-based tax charge based solely on the pricing policy of a business would, it seems, fall foul of Human Rights legislation, particularly as it is open to a trader to legitimately and legally charge whatever price he wants for goods and services.

The current 0/10 system of taxation has been carefully constructed after many years of careful deliberation and research. It is believed to be Ecofin Code Compliant on technical grounds, although the new concept of it being against the ‘spirit’ of the Code has been recently introduced. It would be unwise, at this particular juncture, to start

making any inappropriate amendments to the 0/10 provisions in the Income Tax Law, not least because any such changes would need to be brought to the attention of H.M. Treasury/HMRC for them to be satisfied Jersey was not introducing any new harmful tax measures in relation to its corporate tax structure. Indeed, one of the reasons the original proposed RUDL charge was abandoned was because a strong steer was received from H.M. Treasury that they could not fully understand this proposed charge and that it would raise suspicion at Ecofin that Jersey was trying to circumvent the commitment given to reform its tax system in relation to harmful tax measures. This is the worst possible time, with an assessment due in September, to be varying the 0/10 tax provisions.

### **Conclusion**

If it is deemed necessary to change the behaviour of individuals or organisations or to hit their profit, as the Deputy suggests, it should and can be done through –

- Utilising existing legislation and the powers available to Trading Standards and the JCRA;
- More effective consumer representation, which is being addressed by the current review of the Jersey Consumer Council, which will result in a report and proposition being submitted for debate in the fourth quarter of 2010.

Attempting to change market behaviour by punishing and penalising individuals or businesses for charging high prices, as the Deputy's Proposition suggests, is not the purpose, or a legitimate use, of a taxation system, particularly when alternative market-based options exist.

**The Council of Ministers therefore opposes this Proposition.**

### **Financial and manpower implications**

Deputy Higgins estimates that the total annual cost would not exceed £60,000.

This is considered to be a gross under-estimate of the full costs of developing legislation and operating revised Trading Standards and tax collection activity.

If, as suspected, legislation would need to be enacted; and revised operational and staffing procedures put in place, then it is likely that an annual cost will be considerably in excess of £60,000.