STATES OF JERSEY

DRAFT INCOME TAX (AMENDMENT No. 39) (JERSEY) LAW 201- (P.113/2011): AMENDMENT (P.113/2011 Amd.) – COMMENTS

Presented to the States on 13th July 2011
by the Minister for Treasury and Resources

STATES GREFFE

COMMENTS

NOTE: These comments relate to the amendments lodged by Deputy T.M. Pitman of St. Helier to both P.113/2011 and P.114/2011.

The Minister for Treasury and Resources opposes this amendment for the following reasons –

- Jersey's tax regime must be competitive to be attractive to new wealthy residents.
- Increasing the tax rates charged to High Net Worth Individuals (HNWIs) to higher than under the current regime will make Jersey less competitive and less able to attract new wealthy residents.
- In order for Jersey to benefit from the tax these wealthy people pay, we must first attract them to the Island.
- Perhaps an unintended result of the Deputy's amendment would be to make Jersey more attractive to less wealthy people but less attractive to the more wealthy. Currently, a HNWI must be capable of generating income of £625,000 each year in order to be eligible for a 1(1)(k) consent, but if the Deputy's amendment was approved, an individual with only £500,000 of income would be eligible.
- It is in Jersey's interests that the people who come here have as great an income as possible, in order to maximise the amount spent in the local economy.

Comment

Impact on ability to attract new HNWIs

It is important to bear in mind that P.113/2011, P.114/2011 and this amendment relate solely to the tax position of individuals granted a 1(1)(k) consent from the date on which P.113/2011 and P.114/2011, if approved, come into force. The changes proposed relate solely to any HNWIs who might choose to come to Jersey in the future, not to those already in the Island.

It is irrelevant to say that the wealthy should "face up to their tax obligation fairly" when talking about people who do not yet live here and who have a free choice of where in the world to live. Increasing tax rates will be meaningless unless HNWIs come here to be taxed under them. The Deputy has ignored the very real deterrent effect higher taxes would have on Jersey's ability to attract new HNWIs.

Jersey's 1(1)(k) regime brings wealth, economic activity and job creation to Jersey which would otherwise not have been secured. Enhancing the financial benefit of the regime is best achieved by attracting more HNWIs to the Island.

Many other jurisdictions including the UK recognise the benefit that attracting wealthy immigrants bring, and offer special tax regimes to encourage them. In order for Jersey to successfully compete in this area, it must be able to offer a competitive tax regime.

Jersey's current tax regime acts as a deterrent for HNWIs because of its complexity and because it is uncompetitive compared with our closest competitors. The changes proposed in P.113/2011 and P.114/2011 are intended to improve this position. However, the amendments proposed would undermine this effort.

There is evidence to show that the number of applications for 1(1)(k) consents is affected by the amount of tax charged. The Deputy refers approvingly to the time in the 1990s when the minimum tax contribution required of a 1(1)(k) was £200,000. He does not mention that only one consent was granted in that time, and that figure only increased once the minimum contribution was reduced.

At its simplest, if Jersey's tax regime is uncompetitive, we will struggle to attract more new 1(1)(k)s. If we cannot attract more new HNWIs we cannot tax them and we will also lose the economic benefits of having them in the Island. The Deputy's amendment would make Jersey uncompetitive.

Why is Jersey uncompetitive?

Comparing the tax regime in Jersey with some of our closest competitors, it is clear that Jersey imposes one of the highest tax burdens.

Territory	**Tax rate charged**	**Maximum liability**
Jersey	Overseas-source income: 20% on first £1 million, 10% on next £500,000 and 1% on all income above £1.5 million. 20% on all Jersey source income	Uncapped
Guernsey	20%	Capped at £100,000 on non-Guernsey source income and Guernsey bank interest, or £200,000 on worldwide income if most income arises in Guernsey
Isle of Man	20%	Capped at £115,000
Switzerland	Taxed on 'forfait' basis by reference to level of expenditure rather than by level of income. In practice, the level of expenditure is negotiated and agreed at a fixed level	Can be as low as £35,000 – £45,000, depending on canton
Monaco	0%	Nil

The Deputy notes that the Swiss "forfeit" system has been subject to some criticism in recent times. It is true that the federal government has increased the basis on which the tax is calculated, but far from true that the system is in the process of being dismantled. In practice, it remains to be seen whether this move will result in higher tax liabilities due to the practice of negotiating fixed tax payments with local authorities.

At face value, Guernsey may appear to charge higher tax due to the existence of the second £200,000 income tax cap in addition to the cap of £100,000 which applies to foreign source income and Guernsey bank deposit interest. In practice, wealthy immigrants rarely pay the £200,000 cap for a number of reasons. A new resident will be encouraged to invest his capital outside Guernsey, thereby ensuring that his income is classed as non-Guernsey source income and subject to the lower cap. The second reason is that unlike Jersey, Guernsey does not require that new residents pay a minimum tax contribution, so those who are capable of structuring their income can do so more aggressively than in Jersey and therefore pay less tax.

Investment in Jersey

The Deputy appears to have misunderstood the difference between money spent in Jersey by HNWIs and money invested in Jersey. HNWIs invest heavily in their homes and communities by buying goods and services and participating in Jersey life. However, when deciding where to invest their excess capital in order to generate income, this tends to be outside the Island, because the current tax regime encourages them to do so. This is the fault of the tax policy, not the 1(1)(k) regime, and P.113/2011 and P.114/2011 are intended to rectify this situation.

The Deputy refers to requiring future HNWIs to make direct investment in the Island. This is one of the matters currently under review as part of the review of the HNWI regime.

Morality

The Deputy queries the morality of the 1(1)(k) regime. The Minister for Treasury and Resources does not consider this is relevant to the amendment at hand, but would note that the review he was asked to undertake by States Members was into methods of increasing revenues from the regime, which he has done.

He would also note that approximately 30% of households in Jersey pay no income tax and the average bill for those who do pay tax is £7,000. If Jersey had never introduced a special tax regime for HNWIs, the £13.5 million tax they pay (an average of £100,000 per head) would have to be borne by the rest of the population. The millions of pounds of economic benefit brought would also have been lost.

Financial and manpower implications

The Deputy predicts that income achieved as a result of this amendment would be double that which could be achieved from P.113/2011 and P.114/2011 in their unamended form. This is flawed for the following reasons –

- Jersey currently struggles to attract the number of HNWIs it wants to. Increasing the tax rates charged on new residents will reduce the number who wish to move here and therefore the tax they pay.

- Doubling the rate of tax charged does not automatically mean that tax receipts will double.

Although the changes would deter those on the highest incomes, they would also have the perhaps surprising effect of making it easier for those with lower incomes to obtain 1(1)(k) consents. This would undo much of the benefit to the Island from increasing the minimum tax contribution in December 2010.

One of the reasons for making this increase was not only to increase direct tax revenues from HNWIs, but also to attract wealthier HNWIs to increase the economic benefit to the Island. Before the change, a HNWI had to be capable of generating £500,000 of income per year in order to meet the minimum tax contribution of £100,000. Under the new minimum contribution, he must have income of £625,000. If this amendment was approved, he would only require £500,000 again. By making the regime available to those with lower incomes, this would reduce the knock-on benefit to the rest of Jersey's economy, thus undoing some of the good that came from making the increase.