STATES OF JERSEY

DRAFT INCOME TAX (AMENDMENT No. 39) (JERSEY) LAW 201-

Lodged au Greffe on 7th June 2011
by the Minister for Treasury and Resources

STATES GREFFE

DRAFT INCOME TAX (AMENDMENT No. 39) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources the provisions of the Draft Income Tax (Amendment No. 39) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

The Draft Income Tax (Amendment No. 39) (Jersey) Law 201-, together with the Income Tax (Prescribed Limit and Rate) (Amendment) (Jersey) Regulations 201-, proposes to introduce a new tax regime for individuals granted a housing consent under Regulation 1(1)(k) of the Housing (General Provisions) (Jersey) Regulations 1970. The new regime will apply to individuals whose application is made for the first time on or after the date on which the amendment comes into force.

The amendments to the tax regime were announced by the Minister for Treasury and Resources in December 2010. These are to remove the distinction between Jersey and non-Jersey source income for the purposes of calculating the tax liability of a 1(1)(k) resident, and to tax their income at the rates of 20% on the first £625,000 of income and 1% on all income thereafter.

Background

In order for an individual to purchase or lease residentially qualified property in Jersey it is necessary to obtain the consent of the Minister for Housing under the Housing (Jersey) Law 1949. The applicant must fulfill one of the criteria included in the Housing (General Provisions) (Jersey) Regulations 1970. Consent may be granted under Regulation 1(1)(k) if the Minister is satisfied that consent can be justified on social or economic grounds and is in the best interests of the Jersey community.

Since 2010, a review has been undertaken in order to identify ways to secure and increase tax revenues from 1(1)(k) residents. As a first step, the minimum annual tax contribution expected from new 1(1)(k) residents was increased from £100,000 to £125,000 with effect from 30th December 2010.

Research indicates that the best way to increase the revenue and economic benefit from the 1(1)(k) regime is to attract more of these individuals and their wealth to the Island. The changes to the tax regime proposed in this draft amendment are intended to achieve this.

The review of the 1(1)(k) regime continues to be undertaken by the Housing, Economic Development and Treasury and Resources Departments. Further legislation is expected to be brought forward at a later date to ensure that Jersey's tax revenues from the 1(1)(k) population are protected and continue to grow. In deciding whether to grant an application under Regulation 1(1)(k), consideration will continue to be given to the population policies determined by the States.

Removing the disincentive to invest in Jersey

The tax regime currently applied to those granted a housing consent under Regulation 1(1)(k) from 2005 onwards is set out in Article 135A of the Income Tax (Jersey) Law 1961. This currently provides that the first £1 million of income earned outside Jersey is taxed at 20%, the next £500,000 is taxed at 10% and a rate of 1% is payable on the balance. Income earned in Jersey is taxable at the standard rate of 20%.

These rules have some negative effects. Firstly, the current rules mean that 1(1)(k) residents are tacitly discouraged from investing in Jersey because of the higher tax liability charged. At a time when Island businesses are in need of capital flows, it is counter-intuitive to effectively encourage our wealthiest residents to invest their excess capital outside the Island.

Secondly, the current tax rules encourage 1(1)(k)s to hold their income-producing assets outside the Island, to the detriment of Jersey investment management and administration service providers. The tax regime should encourage new residents to bring their assets to the Island.

Thirdly, the current regime effectively discourages business people from bringing their businesses to Jersey. The profile of wealthy residents attracted to Jersey has changed in recent years. Where in the past, these individuals were typically retired or living off investment income, now the profile of individuals attracted is younger and more economically active. Our current regime either discourages these people from coming to the Island entirely, or encourages them to place their businesses elsewhere. The tax regime should encourage new business, together with the increased employment and opportunities for economic growth it brings, to come to Jersey.

Making Jersey more competitive

Wealthy people have always had the option of relocating to jurisdictions which can offer them the most attractive package. Jersey has benefited from this in the past, but as more countries increasingly compete to attract the wealthiest to their shores, the Island risks becoming uncompetitive.

While other factors do influence the decision by a wealthy individual on where to relocate, it cannot be denied that the tax regime available is an important consideration. The wrong tax regime will be a barrier to attracting wealthy individuals, all other things being equal. Comparing the tax regime charged to high net worth individuals 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	Uncapped
Guernsey	20%	£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%	£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

It is true that Jersey has succeeded in continuing to attract wealthy individuals, and in particular, that numbers have improved since 2004/5 when the scheme was last reviewed and its provisions rationalized. However, the numbers attracted have continued to fall short of aspirations, with particular reference to the target of 15 1(1)(k)s per year that the Housing Committee established following the earlier review.

Jersey property income

Income derived from land and buildings in Jersey (i.e. income derived from renting or developing a Jersey property) will continue to be taxed at the standard rate of tax and the lower rate of tax does not apply to this income.

Financial and manpower implications

No additional manpower requirements will arise from the implementation of Amendment No. 39 and the Income Tax (Prescribed Limit and Rate) (Amendment) (Jersey) Regulations 201-. It is anticipated that simplifying the tax regime for future 1(1)(k) residents, combined with a greater focus on marketing and improvements in the application process, may allow the Island to attract up to 15 applicants each year (which is in line with current limits), each of whom would pay a minimum level of tax of £125,000.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 7th June 2011 the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Treasury and Resources the provisions of the Draft Income Tax (Amendment No. 39) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This Law amends Article 135A of the Income Tax (Jersey) Law 1961. Article 135A applies to a person who, on or after 1st January 2005, is granted consent, in the case described in Regulation 1(1)(k) of the Housing (General Provisions) (Jersey) Regulations 1970, to acquire and occupy land or property. Paragraph (3) of Article 135A provides that so much of the person's total income as exceeds a limit prescribed by Regulations and which is not Jersey income shall be taxed at a rate that is also prescribed by Regulations.

This draft Law –

(a) preserves the existing rule for taxation of a person granted consent after 1st January 2005; and

(b) adds an alternative rule for the taxation of a person whose application for consent is made on or after this Law comes into force and who has not been granted a 1(1)(k) consent previously.

Article 1 amends Article 135A.

The amendment made by paragraph (a) preserves the application of the existing rule for taxation, but closes it to new entrants.

Paragraph (b) adds paragraphs (3A), (3B) and (3C).

> Paragraph (3A) defines the new entrants to whom the alternative rule for taxation would apply. They are persons who are granted a 1(1)(k) housing consent to acquire and occupy land pursuant to an application made on or after the day this draft Law comes into force and who have not previously been granted a 1(1)(k) housing consent.
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> Paragraph (3B) states the rule for taxation that applies in their case. If the person's income chargeable to tax under Schedule D exceeds a limit prescribed by Regulations, the excess is chargeable to tax under Schedule D at a rate prescribed by Regulations.
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> Paragraph (3C) specifies that dividends received by a person that are paid out of profits charged to tax at the standard rate are to be disregarded in calculating his or her income chargeable to tax under Schedule D for the purposes of paragraph (3B).

Paragraph (c) amends Article 135A(4) so as to confer the power for the States to make the Regulations referred to in paragraph (3B).

Paragraph (d) defines an "application" as an application for 1(1)(k) housing consent.

Article 2 provides for the citation of this draft Law. If the States were to decide to make an Act under Article 19 of the Public Finances (Jersey) Law 2005, this Law would come into force on the day that the Act is made.

Jersey

DRAFT INCOME TAX (AMENDMENT No. 39) (JERSEY) LAW 201-

A LAW to amend further the Income Tax (Jersey) Law 1961.

Adopted by the States	*[date to be inserted]*
Sanctioned by Order of Her Majesty in Council	*[date to be inserted]*
Registered by the Royal Court	*[date to be inserted]*

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Article 135A of the Income Tax (Jersey) Law 1961 amended

In Article 135A of the Income Tax (Jersey) Law 1961[1] –

(a) at the beginning of paragraph (3) there shall be inserted the words "Subject to paragraph (3A),";

(b) after paragraph (3) there shall be inserted the following paragraphs –

"(3A) Paragraphs (3B) and (3C) apply in a person's case instead of paragraph (3) if –

(a) the person acquires land or property conferring a right to occupy land pursuant to a 1(1)(k) housing consent granted pursuant to an application made on or after the day that the Income Tax (Amendment No. 39) (Jersey) Law 201- comes into force; and

(b) the person has not previously been granted a 1(1)(k) housing consent.

(3B) Notwithstanding the rate of tax required by Article 1 to be charged for a year of assessment, where, for a year of assessment, so much of the income of a person to whom this paragraph applies by virtue of paragraph (3A) as is chargeable to tax under Schedule D exceeds the limit prescribed for the purposes of this paragraph for that year, the amount of the excess of that income chargeable to tax under Schedule D shall be charged to tax at the rate prescribed for the purposes of this paragraph.

(3C) In calculating, for the purposes of paragraph (3B), the amount of a person's income chargeable to tax under Schedule D there shall be disregarded any dividend declared out of profits or gains charged to tax at the standard rate on any body of persons.";

(c) in paragraph (4) –

(i) for the words "for the purposes of paragraph (3)," there shall be substituted the words "for the purposes of each of paragraphs (3) and (3B),",

(ii) for the words "that paragraph" there shall be substituted the words "the paragraph";

(d) in paragraph (5) before the definition "1(1)(k) housing consent" there shall be inserted the following definition –

" 'application' means an application for 1(1)(k) housing consent made under Article 13 of the Housing (Jersey) Law 1949[2];".

2 Citation

This Law may be cited as the Income Tax (Amendment No. 39) (Jersey) Law 201-.

[1] *chapter 24.750*
[2] *chapter 18.315*