

STATES OF JERSEY



DRAFT MEDIUM TERM FINANCIAL PLAN ADDITION FOR 2017 – 2019 (P.68/2016) – FIFTH AMENDMENT (P.68/2016 Amd.(5)) – COMMENTS

**Presented to the States on 26th September 2016
by the Council of Ministers**

STATES GREFFE

COMMENTS

Deputy J.A.N. Le Fondré of St. Lawrence proposes that –

- the States withhold consent to the application of resources for work on the development of ‘user pays’ charges in relation to domestic liquid waste and domestic solid waste, any such consent requiring separate authorisation by the Assembly;

and that –

- any new commercial liquid and any commercial solid waste charges shall include provision whereby a business operating in Jersey, or by election the beneficial owner of such business, shall be entitled to claim relief from effective double taxation in Jersey on the money expended on such charges.

The Council of Ministers proposes to amend and agree the first part of the Amendment and urges States Members to reject the second part.

Summary of Council of Ministers’ Comments

- The Council of Ministers is proposing significant investment in Education and Health over the period of the MTFP, amounting to almost £50 million per year by 2019.
- The MTFP also proposes £168 million investment in capital projects such as schools, infrastructure projects, IT and replacement assets. Considerable amounts of funds in this and the previous MTFP period have been allocated to the maintenance and replacement of the Island’s waste treatment and disposal facilities.
- This investment is made possible by the re-prioritisation of resources to States’ strategic priorities and also means that all departments, including Health and Education, must contribute to the savings required.
- It is also appropriate to introduce ‘user pays’ charges for some services. One of the most significant new charges is the introduction of both solid and liquid waste charges for commercial customers. Offsetting these charges against income tax revenues received from these businesses would mean eligible businesses paying disproportionately high charges if the same yield were to be achieved.
- Not being able to consider the impact of domestic charges when evaluating commercial charges will make the task of the Infrastructure Department and its advisers considerably more challenging, as even when not implemented, it is necessary to understand the proportion of charges that are attributable to each sector when considering the costs of delivering services, hence the Council of Ministers is amending the first part of the amendment.
- Although the driver for the introduction of commercial charges is the generation of income, there are several positive environmental outcomes that would also arise. This amendment would significantly reduce those incentives.

Detailed Comments

Part 1

Part 1 of the Amendment seeks to limit the scope of any review work to considering commercial charges only. Whilst seemingly reasonable given that current proposals are limited to commercial charging, the impact of domestic contributions to the various waste-streams needs to be considered when deciding on appropriate charges for commercial customers.

The wording quoted in the proposition “it is proposed initially to introduce charges for commercial operators” seeks to limit the scope of the proposed introduction of charges to the commercial sector only. Any proposals to introduce charges for domestic customers would need to receive separate approval from the States Assembly, and is not envisaged within this MTFP period.

Detailed proposals for the introduction of charges will be considered by the States in 2017. In seeking to limit the scope of any review work to that of commercial customers only, the Deputy puts at risk the work still required to prepare for this debate. Indeed, it could have the unintended consequence of putting domestic customers in scope of charges if areas of potential overlap with the commercial sector cannot be investigated.

The proposals will be limited to commercial charges, and any decision the States take in 2017 will not apply to domestic customers. However, in order to identify the necessary levels of charges to: (a) meet the projected income targets; and (b) cover the costs of the commercial waste, the proportion of domestic waste must be taken into consideration.

Hence the Council of Ministers has proposed an Amendment to this Amendment to clarify that research can be undertaken only to enable the effective implementation of charges to commercial waste users.

Part 2

Part 2 of the Amendment seeks to reimburse commercial customers paying income tax in Jersey by crediting any charges against their income tax liabilities. Under the Deputy’s proposals, any businesses or local shareholders which pay income tax in the Island would make no net addition to States revenue as a consequence of waste charges; in other words they would not actually pay anything additional to the States on the introduction of the waste charge, as any tax liability would reduce by an equivalent amount to their waste charges.

Companies which pay tax (e.g. banks, utility companies) would be able to reduce their corporate income tax liability by the amount of the waste charge that they pay.

Meanwhile, the largest corporate income taxpayers, such as the big banks, will effectively pay nothing; as they will pay enough income tax to credit the whole of their waste charges. 0% companies have no tax liability to reduce, but the Deputy proposes that the local shareholders will be able to reduce their personal income tax liability by the amount of the waste charge. This will be complicated (but not impossible), with the consequence of additional administrative costs.

Those businesses which would continue to “pay” the waste charges include not only non-locally owned companies taxed at 0%, but also those small, sole trader businesses whose owners don’t pay personal income tax because their profits are lower than the exemption thresholds applicable to the sole trader¹.

Providing a tax credit to large corporate income taxpayers should be relatively straightforward – although it will clearly add complexity to the tax system from both a taxpayer and a Taxes Office perspective. However, it will be much more complicated in the context of locally owned companies taxed at 0%; where the shareholder is subject to personal tax only when the company makes a distribution (e.g. payment of a dividend).

To give effect to the Deputy’s intention, the shareholder will need to receive a tax credit which reduces their tax liability. When should the shareholder receive the benefit of this tax credit? If it is to be given immediately, there is a risk that the waste charge will be credited before the business profits have been taxed, resulting in a cash-flow disadvantage for the States. If the benefit of the credit is delayed until a distribution of business profits is made, the shareholder will experience a cash-flow disadvantage, as the waste charges are paid immediately and yet the tax credit is deferred to an unspecified time in the future. Tracking the availability of these tax credits through to shareholders will add further complexity to an already complicated area of Jersey’s tax law.

If tax credits were given as proposed by the Deputy, to actually raise an additional £11 million of revenue for the States, the waste charges will have to raise significantly more than £11 million. For those businesses which continue to “pay” (see above), the charges may become so disproportionate to the services actually received that they choose to seek alternative cheaper disposal routes for their waste which could be less environmentally friendly, further reducing the amount actually raised from the waste charges.

It appears from the Amendment that credits would also be available for existing charges levied by the Department for inert waste, abattoir services, the knackers-yard, green waste, contaminated soils, asbestos, etc., which currently raise approximately £3 million per annum. This would further increase the charges on businesses that could not receive tax credits, as £14 million would then have to be generated.

Parishes charge their residents for collection of refuse through the rates system. The fact that commercial ratepayers pay rates does not remove the need for some of these to additionally pay for collection of excessive amounts of waste, or particular types of waste, to the private sector. The fact that these private sector waste operators currently dispose of that waste “for free” would have been rectified in the original proposals, but not under the proposals of the Deputy.

Most commercial businesses charge for the removal of white goods or furniture when delivering replacements, even though they then dispose of those items at facilities run by the Department for Infrastructure for free. In the U.K., the Waste Electrical and Electronic Equipment directive levies a disposal charge on retailers to ensure that new

¹ The sole trader has no income tax liability to credit the waste charges against, and hence the waste charge remains a real cost.

electrical goods pay for the disposal of the items replaced or when they reach the end of their useful lives. No such scheme exists in Jersey and the taxpayer currently meets that cost.

Allowing solid waste charges already levied by the States to be entirely offset against tax liabilities will effectively kill competition in the marketplace, which already exists in some markets such as aggregate recycling, agricultural polythene, cardboard, etc. Why would any local business pay a commercial operator for such a service, when any charges paid to the States will effectively become a “free good”?

As the impact of this amendment is unknown, the Department cannot estimate in the time available the level of charges that would be required in order to fully recover the income lost to the States through tax offset. However, they are highly likely to be significant. In addition, as the impact of this would only be known 1–2 years after the initial charges were introduced, the likely tax impact would only be known long after the income had initially been accounted for. As such, it could leave a future States Assembly with potentially a large shortfall in income, and more significant measures to balance the budgets measures to plug the gap – potentially including domestic charging at significantly higher levels than commercial charging, would be required in the next MTFP.

As the proposed commercial charges are ‘user pays’, it is hoped that this provides an incentive for businesses to reduce or recycle their waste in order to reduce the charge. There are businesses who currently send waste for disposal to the Energy from Waste Plant that is both potentially harmful to the Plant and that can be reused or recycled, e.g. engine blocks and UPVC window frames.

The “Polluter Pays” principle has long been established throughout Europe. We are one of the last jurisdictions that does not levy commercial waste charges – this proposal seeks to not only further continue this, but to extend it to areas where there are existing charges.

Financial implications

There are staffing implications arising from the requirement to allow tax relief against the full cost of charges, in order to administer this additional requirement. At this stage the impact of this is not known.

There will be considerable financial implications as a result of this amendment; however, the impact will not be realised until 2019–2020. As such, it is difficult to estimate the potential shortfall in existing States revenues as a result.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were received by the States Greffe after the deadline set out in Standing Order 37A because the Council of Ministers wanted to ascertain the views of members and to ensure proper consideration was given to the Amendments and the later Amendments to Amendments, to provide the latest information ahead of the debate.