STATES OF JERSEY

DRAFT INCOME TAX (HIGH VALUE RESIDENTS – AMENDMENT) (JERSEY) LAW 202- (P.29/2023) – COMMENTS

Presented to the States on 21st June 2023
by the Corporate Services Scrutiny Panel

STATES GREFFE

COMMENTS

Background and Context

1. The Minister for Treasury and Resources lodged the proposition Draft Income Tax (High Value Residents – Amendment) (Jersey) Law 202- [P.29/2023] (hereafter the "draft Law") on 16th May 2023. If adopted, the draft Law will provide a new taxation regime (version 5) which will secure an overall increase in the taxation requirements for new 2(1)(e) residents from 14th July 2023. Version 5 will supersede version 4, the current taxation requirements for 2(1)(e) entrants.

2. The proposition notes that the legislative framework imposed by Jersey to attract wealthy immigrants consists of two distinct, but interrelating, elements:

   - The granting of housing rights to an individual under the relevant Control of Housing and Work legislation.
   - The tax regimes which govern minimum tax payments and access to preferential tax rates as specified in the Income Tax legislation for those to whom housing rights have been granted.

3. The residential status in accordance with regulation 2(1)(e) and formally 1(1)(k) consent, under the Control of Housing and work Law[1] permits high value residents (hereafter "HVR") to apply for entitled residential status. Applicants who successfully meet the criteria may be granted high value residency[2] by the Chief Minister, where decisions are made on a case-by-case basis with consideration for the applicant's overall impact to Jersey in relation to their minimum annual taxation contribution, economic benefit and financial history.

4. The Government Plan 2023-26[3] notes that the Minister for Treasury and Resources must consider the limits and rates of income tax for HVR by 1st January 2023 and every five years thereafter. It further notes from 2018 that all incoming HVR have entered regime version 4 of the scheme. The Government Plan 2023-26 also recognises the requirement for a review into the HVR scheme in order to refresh the scheme for new applicants.

5. The Corporate Services Scrutiny Panel (hereafter "the Panel") received a private briefing on the review of the 2(1)(e) scheme and its outcomes from the Chief Minister and Government Officers on 26th April 2023.

The Current Scheme – Version 4

6. By way of background, the Panel was informed that since 2010 the taxation requirements had been increased and tightened with each successive version of the HVR scheme.

7. It was explained that subsequent to the States' adoption of the Government Plan 2023-26, the current taxation parameters were set at 20% up to an income of £850k per annum and that the minimum annual taxation liability had increased from £145k to £170k for HVR.

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[1] Prior to 2012, the relevant provision in the Housing Regulation was Regulation 1(1)(k); replaced in the Control of Housing and Work Law by Regulation 2(1)(e).
[2] High value residency – Government of Jersey
[3] P.97/2022 - Government Plan 2023-26 – Pg 34

8. Therefore, the current requirements under version 4 of the scheme are:

   - 20% taxation rate on income up to £850,000 (and 1% above that income amount).
   - Minimum annual taxation liability of £170k (increased from £145k following the adoption of the Government Plan 2023).
   - Consideration for business background, philanthropic expectations, wealth expectations and reputational implications.
   - The purchase of one property as a principal place of residence.

9. The Panel was informed that in 2005 an aspiration of fifteen HVR applications per annum was set and that number had since remained. It was emphasised that all applications undergo due diligence and are approved by the Housing and Work Advisory Group (HAWAG). It was further emphasised that the overall policy direction for the scheme was to encourage a younger, more active cohort of applicants in order to influence wider economic benefit for Jersey.

10. The Panel sought to understand the level of due diligence undertaken and asked if instances occurred where applications were received or processed without sufficient criminal record checks being completed. The Panel was informed that this had not been witnessed, but some applications were received that were subject to additional checks. The Panel was further informed that open-source checks were performed before commencing the process that evaluated risk. Moreover, that engagement was undertaken with the States of Jersey Financial Crimes Unit as well as the Jersey Financial Services Commission. It was advised that all documentation must also be received from the applicant to demonstrate the checks undertaken within the country the applicant planned to arrive from.

11. The Panel raised concern whether applications could be received where an individual was applying on behalf of their partner who may be identified as high risk. The Panel was informed that applications could be received that matched that scenario, but it was believed that the robustness of the application process would identify the potential risk of any application.

12. The Panel sought to understand the extent to which the scheme could be used by employers to relocate staff to Jersey. The Panel was informed that although it was possible for employers to relocate employees, all applicants would need to meet the required criteria. It was further explained that such scenarios often brought significant net benefit to the Island, specifically in employment for local people when companies relocated. It was believed that companies saw relocation for crucial staff as necessary, so would choose an alternative location if they could not be accommodated.

The Review Process

13. Following adoption of the Government Plan 2023-26, a review of the 2(1)(e) scheme was included within the Chief Minister's Ministerial Plan for 2023.

14. From the briefing, the Panel understood that the review was conducted internally and involved the Cabinet Office, Revenue Jersey and the Department for the Economy. Moreover, to inform the review process, professional

stakeholders including the Financial Strategy Group, United Kingdom (UK) Intermediaries (to provide an alternative view to inform the decision-making process) and Estate Agents (with vested interests within the housing industry) were consulted between February and March 2023.

15. It was highlighted to the Panel that the review process was overseen by the HAWAG through consultation with the Minster for Treasury and Resources and the Minister for External Relations and that the final decision on the policy direction and resultant proposed legislative changes were agreed by the Council of Ministers.

16. The Panel notes that, in the main, the review considered the following areas for change:

    1. Minimum taxation requirement
    2. Minimum property price
    3. Minimum asset threshold

17. In addition to the above, consideration was also given to the enhancement of community and charitable value and the provision of support for the relocation of entrepreneurs who would help to grow Jersey's economy.

18. The Panel was informed that the criteria to attract HVR was continually evolving and had been shaped over the years by external factors as well as taxation requirements.

19. The Panel was further informed that the regime sought to present Jersey for the many benefits available in a way that allowed applicants to benefit from the local environment and create a comfortable lifestyle.

20. The Panel asked how many agents were involved in the relocation of applicants. It was explained that there were three to four agents who engaged with applicants to inform and assist with regards to identifying properties, schools and other aspects of relocating.

Applications Statistics

21. The application statistics, as demonstrated on page three of the proposition, were clarified to the Panel. The Panel was informed that the statistics were presented as five-year averages to provide stability in reviewing long-term trends, particularly as five-year averages provided a stable overview in relation to applications and the impact on the property market. It was further emphasised that when reflecting on the statistics that the focus was primarily on the net increase of approved applications, as this took departures from the Island into consideration alongside arrivals (approvals).

22. In respect of the first year of arrival for an HVR entrant, the Panel was informed that it was not intended that entrants would be liable for a pro-rata taxation liability. Instead, entrants would be liable to pay a full year's liability regardless of the arrival date. When questioning whether such a policy already existed, it was confirmed to the Panel that any entrant who had arrived subsequent to January 2018 was liable to pay the current £170k under the version 4 regime.

23. The Panel understood, where the five-year average demonstrated an approval rate above the annual aspirational limit of fifteen, that departures from the Island generally brought the average down to below the limit. From the briefing, the Panel observed that the application statistics demonstrated a rate in arrivals and departures which largely maintained the aspirational limit.

Minimum Taxation Requirement

24. Noting that it is proposed that the taxation threshold is increased from £170k to £250k and that Jersey already currently has a higher taxation threshold for HVR in comparison with other jurisdictions, the Panel questioned whether any pushback against the current taxation threshold had been received. The Panel was informed that intermediaries in the UK often advised on economic benefit. Therefore, although Jersey may be seen as more expensive than other jurisdictions, individuals who applied in Jersey were looking for a British-style lifestyle, so were guided towards crown dependencies.

25. The Panel was further informed that the increase to £250k for minimum taxation was relatively high but it was felt that the Island provided economic certainty which was looked upon positively by applicants.

26. During the briefing the Panel considered Guernsey's (also a crown dependency) HVR process and noted that Guernsey does not have an application process and its HVR offering may appear superior in comparison to Jersey's scheme to some individuals. The Panel was informed that while applicants would consider such economic details, it had been demonstrated that Jersey is looked upon favourably by applicants as a place of residence.

27. The Panel highlighted that many HVR desired to pay little to no taxation. Although it was agreed this would be an unfair proposal, it was explained that many HVR recognised the 20% taxation as a relatively low rate.

28. The Panel sought to understand whether the £250k minimum taxation threshold would be uplifted, to which it was confirmed that it would. The Panel also questioned whether the five-year policy would be kept, to which it was explained that it would remain relative to the Retail Price Index (RPI) increases. Therefore, the Panel understood that HVR are not bound by the five-year period, instead the five-year period is for measuring statistics and does not impact applications.

Minimum Property Price

29. The Panel notes that it is proposed to increase the minimum property price to £3.5m for houses and £1.75m for apartments (with flexibility around developments costs).

30. Moreover, under version 4, the Panel noted that HVR entrants were currently restricted to purchase one qualified property as a principal place of residence and that remained unchanged under the proposals for the new regime. However, it was highlighted that exceptions existed with regard to the purchase of share transfer owned properties as well as purchases of property development companies.

31. Noting the substantial increase in the minimum property purchase price under the proposals for the new regime (an increase from £1.75m for houses in published policy), the Panel questioned whether the policy review had examined the effect of raising the minimum purchase price and the impact of the proposals on Jersey's housing market as a result of the proposed changes. The Panel was informed that the intention had always been to avoid interference with, and to protect, the local housing market, which meant taking into consideration the volume of available property in different housing markets alongside their respective price points.

32. However, the Panel raised concern that property purchases by HVR at the proposed price points has the potential to present significant development opportunities, which could be used by individuals to pursue high-return investment opportunities. The Panel commented further that although this was not inherently negative, it was concerning that it was unknown whether the 2(1)(e) scheme was contributing towards housing inflation and property price distortion.

33. The Panel also highlighted that the scheme could encourage the purchase of properties at inflated prices based on a plot that provides attractive development opportunities due to minimal previous development, which was concerning for the Panel. The Chief Minister aimed to alleviate the Panel's concerns in that regard and confirmed that the policy did not intend to motivate behaviour towards developing larger properties.

34. The Panel reiterated its concern that traditionally property price distortion had not been understood. The Panel is concerned that the policy's impact on the property markets remains unclear and was neither sufficiently investigated nor evidenced through the review process.

Minimum Asset Threshold

35. Noting that it is proposed to establish a net asset expectation for HVR within policy at a guide value of £10m, the Panel questioned whether consideration was given to ensure applicants were in a position to invest in Jersey without carrying too much debt. It was explained that when gauging the appropriate net asset threshold, it was felt that a threshold that was too high would discourage individuals from applying. It was confirmed that as part the application process, an applicant's potential to invest was considered, which often included applicants whose wealth was made up largely of assets.

36. The Panel further queried the cash requirement for applications, commenting that many applicants had much of their wealth in assets as opposed to cash. It was further explained that the cash requirement of £10m was decided upon to attract younger applicants who were economically active. It was also explained that the scheme looked at declared assets over the years, which focused on individuals who were more likely to bring economic benefit as residents.

Charitable and Social Contributions

37. The Panel was informed that the scheme sought to increase charitable and social resolutions. Therefore, the HAWAG was considering ways to increase benefits to the community and promote organisational partnerships, which would also

enable individuals to understand and identify ways in which they could provide wider social benefit.

38. It was, however, disclosed to the Panel that there must be caution when applying the approach as to avoid the perception that individuals could gain citizenship simply via financial means. Instead, it was sought to encourage charitable and social contributions to increase visibility of the resultant attainable benefits.

39. Noting that the HAWAG had requested, in addition to the changes proposed within the proposition, that officials continue work to develop policy areas in relation to community and charitable activities as well as relocation of entrepreneurs, the Panel sought to understand whether the work to consider the social and economic contribution over the upcoming five-year period had been completed. Although, it was explained that no official study had been completed as it was difficult to track each investment. The Panel was informed of some known recent benefits from the scheme, which included property development, a state-of-the-art fitness centre and charitable donations.

40. The Panel sought to understand at which point during the application process the charitable and social contributions are discussed with the applicants. Moreover, whether the charitable and social contributions are enforced. It was explained that mutual agreements were common, but the importance of remaining cautious in giving the impression that entry could be gained solely via financial means was reiterated.

The Proposed Scheme – Version 5

41. The Panel was informed that the review concluded the following changes as proposed within the proposition:

- The minimum taxation for new entrants will increase from £170k to £250k.
- Charitable and social contributions will be more actively promoted without compulsion as to avoid the perception of a 'golden passport' offering.
- The minimum property price will increase to £1.75m for apartments and £3.5m for houses.
- A net asset expectation of a £10m guide amount will be established within policy.
- Taxation rates will be maintained at 1%.
- Routes to encourage entrepreneurs will be separately developed.
- Strong support for entrants who are able to generate wealth, with an increased emphasis on community, economic benefits and greater fiscal contribution will be maintained.

Implementation

42. It is the Panel's understanding, should the Draft Law be adopted by the States Assembly, that under the Public Finances (Jersey) Law 2019 the proposals brought by the version 5 regime as outlined above will be enforced with immediate effect – P.29/2023 Add.

Further Considerations and Conclusion

43. Subsequent to the briefing received and consideration of P.29/2023, the Panel remains concerned regarding the review process and, therefore, the resultant policy and legislative proposals. Although a review process was undertaken, primarily, it was conducted internally with involvement from the Cabinet Office, Revenue Jersey and the Department for the Economy. The Panel notes that the review process sought views from stakeholders including *professional advisors, estate agents, and recent 2(1)(e) applicants*[4] as acknowledged within the proposition.

44. Notwithstanding the above noted consultation, the Panel raises concern that the review into the 2(1)(e) scheme lacked an independent consultation component and therefore demonstrated limited scope. In addition, it is the Panel's understanding that the stakeholders consulted had vested interest. It is also the Panel's view that the stakeholder representation should have been broader and more inclusive. The Panel notes that within the proposition it is acknowledged that the stakeholders consulted were *not a representative cross-section*[5], however, that the approach provided *expert insight, which aided the making of decisions about how additional value could be promoted while Jersey remains competitive and welcoming*[6]. It is further noted within the proposition that a total of nineteen consultation responses were received which informed the proposals.

45. In light of the above, the Panel raises concerns of whether the evidence gathered was extensive enough to sufficiently substantiate the proposals, particularly considering the current housing concerns within Jersey. Moreover, since the impact of the proposals on the property markets or property price distortion remains unclear. Therefore, the Panel raises concerns that the review undertaken has failed to convincingly measure the impact of the proposals and is not confident that the changes being proposed by P.29/2023 are sufficiently evidenced.

[4/5/6] P.29/2023 - Views were also sought from a number of stakeholders, including professional advisors, estate agents, and recent 2(1)(e) applicants. While it is acknowledged that this is not a representative cross-section, this provided expert insight, which aided the making of decisions about how additional value could be promoted while Jersey remains competitive and welcoming.