



13 February 2009

Mr M Robbins
Scrutiny Officer
Corporate Services Panel
Scrutiny Office
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Dear Mr Robbins

Draft Income Tax (Amendment No. 32) (Jersey) Law 200- (Deemed Rental Charge)

Thank you very much for the opportunity to participate in the consultation process on the proposal to impose a calculated deemed rental charge on non-resident companies.

The Liberation Group owns and operates 66 pubs and bars across the Channel Islands, 42 of which are located in Jersey. We also operate a substantial drinks wholesale business in both Bailiwicks as well as the Jersey Brewery. As a significant operator in Jersey, we are mindful of our role in the business community and of the requirement to ensure that there is good fiscal management of the Island. We do, however, have serious concerns about the proposed regulations and the operation of the consultation process itself.

Scope of the new tax

The law is attempting to collect tax from foreign-owned companies that are trading in Jersey on the basis that, under 0/10, these companies no longer pay any Jersey tax on their profits, which gives rise to two stated issues –

1. they make no direct contribution to the States, despite operating here; and
2. Jersey owned companies will still be taxed, so may become less competitive

In common with many businesses, The Liberation Group's majority shareholder is UK resident and is deemed to be foreign-owned for the purposes of this legislation. In every other sense, however, The Liberation Group is a local company employing local people to serve the local community.

The Liberation Group currently employs approximately 250 people in Jersey. The Group is licensed to employ 352 people and it is anticipated that this capacity will be

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fully utilised during the summer months. The direct payroll cost of The Liberation Group is estimated to be approximately £5 million for 2009. In addition to the payroll cost, The Liberation Group businesses in Jersey generate and pay approximately £1 million in GST and approximately £7 million in alcohol/tobacco duty to the States of Jersey. These figures exclude the contribution to the Island economy generated by our tenanted pub operations. To be specific, of the 42 pubs noted above, over 30 are under tenancy arrangements where the tenants operate the pubs as their own businesses. These tenants will themselves incur payroll costs, generate & pay GST etc. The Liberation Group clearly makes a significant contribution to the Island economy despite being 'foreign-owned' and yet falls under the scope of the legislation.

Within the scope of the deemed rental charge the law defines a non-Jersey Company as one which is more than 51% owned by non-Jersey residents. This definition rests around the principal of beneficial ownership and voting rights, rather than shareholding. Beneficial ownership could be unclear in a publicly listed company and in many private companies.

The management and control of The Liberation Group rests with the Head Office in Jersey and not in the UK. The Jersey premises are held in Jersey companies that are 100% owned by a Jersey registered company. It is this Jersey 'holding' company that is then more than 51% owned by a UK resident corporate shareholder. This corporate structure was set up without any knowledge of the proposal to impose this new deemed rental tax charge.

The definition of a non-Jersey company could also restrict the number of companies to which the law could be applied and ultimately, therefore, may not achieve the aim of raising additional taxation revenue through this amendment. The key point is that it might be relatively easy for some companies to avoid this tax by amending their voting rights without altering their shareholder base. This would certainly not be equitable if there are then even fewer companies, such as The Liberation Group, to which the law applies.

Availability of double tax relief

The Corporate Services Scrutiny Sub-Panel commissioned a firm of UK accountants, BDO, to examine whether the deemed rent tax could be offset against UK tax. Their findings were that under general rules the tax probably could not be offset because there was not a match – the Jersey tax being on deemed rents, whereas the UK tax is based on trading profits. Their view was that this situation could be avoided through a restructuring so that the tax could be offset (for example by transferring the property to a separate group company which, in turn, would rent it at a full market rent to the trading company). For this to happen, The Liberation Group would need to substantially reorganise its Corporate Structure. The Group has 49 Jersey registered companies to manage its estate. The cost and effort of restructuring would be

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substantial for the business and would not be "relatively easy" as suggested by BDO.

The non-availability of double tax relief, therefore, is a critical point for The Liberation Group because it will increase the cost of doing business in Jersey.

Premises that are taxable

The Liberation Group has 30 tenanted pubs and 15 other premises in Jersey. The law requires that an independent valuer is employed and then certified by the Comptroller. As The Liberation Group has over 45 properties that fall within the scope of the law, this would mean an immediate valuation expense of tens of thousands of pounds. The law is also silent on the frequency with which these valuations need to be completed (i.e. will it be every three years) and under what circumstances these valuations might need to be repeated (for example after a refurbishment or additional building work).

Other Clarification points

Article 123H(6) is concerned with resolving the issue of a non-Jersey company having a proportion of shareholders who are Jersey residents. This article states 'an amount that, in the opinion of the Comptroller, fairly reflects the proportion of shares that those residents hold in the company during the year of assessment shall be deducted from the deemed rental income for the year of assessment.' This appears to give the Comptroller discretion about the deduction and it seems to only be available on application. This is an important part of the legislation and it is inappropriate for there to be an element of discretion in this area.

Consultation Process

The original consultation process was completed by the Treasury Department and these results were shared with the Corporate Services Scrutiny Panel. On the basis that there were some concerns, the Panel recommended that the draft legislation be withdrawn and reviewed. We are aware that the original consultation that was published raised concerns, which The Liberation Group share, particularly those of fairness and practicality.

The Liberation Group feel most strongly that this law should be given the widest amount of debate because of the difficulties of implementation and because it has the ability to make Jersey uncompetitive when compared to doing business in other jurisdictions, such as Guernsey. It is interesting to note that the Treasury estimates that it will recover £4m-£6m through deemed rent tax and we would be interested in how this calculation has been arrived at particularly since it must make an assumption on the level of borrowings and related interest costs that can be set off as allowable in arriving at the net tax payable.

If the law goes ahead in its present form, the direct taxation impact for The Liberation Group is likely to be substantial, although the exact level of tax is clearly difficult to assess until the precise mechanics of the draft law are finalised. This is a cost that will

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not be absorbed by the Company and we would seek to maintain the future returns for our shareholders if we are penalised by this tax cost. In simple terms we would react with immediate measures including increasing prices, cutting costs, cutting jobs, reducing investment and closing parts of our Jersey operation down.

Yours sincerely

A handwritten signature in black ink that reads "Mark Crowther". The signature is written in a cursive style and is underlined with a single horizontal line.

Mark Crowther
Chief Executive