# STATES OF JERSEY

# DRAFT INCOME TAX (AMENDMENT OF LAW – TAXATION OF CANNABIS COMPANIES) (JERSEY) REGULATIONS 202- P.93/2021): COMMENTS

**Presented to the States on 16th November 2021**
**by the Economic and International Affairs Scrutiny Panel**

**STATES GREFFE**

## COMMENTS

**Background**
Whilst the EIA Panel would not ordinarily review matters proposed by the Minister for Treasury and Resources, it is currently undertaking a major review into the Regulations for the Licence Application, Production and Export of Medicinal Cannabis on Jersey and, in the circumstances, it was considered appropriate that it should also consider the above regulations as to taxation of cannabis companies.

The Panel's main review seeks to examine and benchmark the Regulations establishing the terms of licensing for the cultivation, import and export of medicinal cannabis and the comparison with other relevant jurisdictions. Such review does in general terms evaluate the scope of the tax regime associated with the Medical Cannabis sector but, as the Draft Regulations P.93/2021 - Draft Income Tax (Amendment of Law – Taxation of Cannabis Companies) (Jersey) Regulations 202- have only recently been published, they of necessity could not be dealt with there.

**The Amendments**
Under existing rules within the Income Tax Law, any potential profits of companies are subject to the standard rate of corporate income tax at 0%. The main effect of the Draft Regulations is to amend provisions in the Income Tax Law so that a company undertaking defined activities would be subject to income tax at 20% rather than 0%. However, other matters worthy of note are as follows;

**Transitional Provisions**
The Panel is advised that a 'transitional period' is standard practice when new tax regulations are implemented. If there was no transitional period and a company's tax year fell at the end of January 2022, they would be liable for tax according to the law in place at the time of their year-end therefore any profits incurred from 1st February 2021 to 31st January 2022 would fall under any new tax regulations implemented on 1st January 2022. The Panel considers this to be a fair rule to be implemented and is supportive of it. However, the Panel is advised that this may have little practical significance given the likely level of liability in a company's early years.

**Income Streaming**
It should be noted that in Guernsey, a business that carries out more than one activity under the same company may incur different rates of tax on each of those activities. This is called income streaming and is not a model followed in Jersey. Jersey regulations state that should a company, registered in Jersey to cultivate cannabis, undertake activities not related to cultivating cannabis, that activity would be taxed at 20% as no differential tax rates would be applied within the same company.

**Capital Allowance for Glasshouses**
Whilst capital allowances are not usually permitted in respect of land or buildings, capital allowances at a lower rate of 10% (rather than the usual rate of 25%) are so permitted in respect of glasshouses.

As regards such allowances, the Panel appreciates the background whereby, under the existing law applicable to agriculture and farming, glasshouses had the benefit of a 10% allowance; the Panel therefore accepts the rationale of extending this benefit to a cannabis company where the glasshouse concerned is to be used for cultivation. However, if a glasshouse were to be used not simply for cultivation but for some form of processing (and for which planning consent would be necessary) the Panel questions whether such allowance is appropriate; in the latter event, the activity might more accurately be regarded as industrial (as opposed to agricultural) and, in those circumstances, it is difficult to see why a company engaged in an industrial activity in a glasshouse should be in a more favourable position than one which conducts that same activity on, say, a purpose built site.

The Government Plan 2022 – 2025 has identified taxation measures to raise approximately £10 million in total from several sources, including medicinal cannabis growing and processing. However, tax experts whom the Panel consulted to better inform it in preparing this report have raised the lack of supporting data around future intake and, with only two licences granted to date, the Panel will in its major report conclude that there will be minimal tax intake in the next few years; indeed, it suggests possible alternative measures by which financial contributions might be made but these are outside the scope of this particular review.

**Conclusion**

The Panel accepts that the cannabis industry has the potential to be a new source of revenue for the Island and, as such, is supportive of the regulations to apply a rate of 20% for the industry. However, the Panel has seen no real projected data to confirm any figures regarding the taxation of medicinal cannabis and when asked, the Minister for Treasury and Resources informed the Panel that that due to the industry being in its very early stages, forecasts would be speculative.

The Panel has learnt through the course of its review that the business model of medicinal cannabis companies generally requires that they invest heavily in the early years of the business. It is therefore likely that profits from the industry may be minimal for several years from the date of licence registration.

The Panel requests the Minister, in conjunction with other Ministers having responsibilities relating to the industry, to give consideration to the Panel's comments with a view to bringing forward possible amendments in the near future.