STATES OF JERSEY

FISCAL STRATEGY (P.44/2005): SECOND AMENDMENT

Lodged au Greffe on 19th April 2005
by Senator S. Syvret

STATES GREFFE

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At the end of paragraph (b), after the final word add the following words –

> "except that there shall be no *de minimis* limit in respect of holdings in private companies, public companies, unit trusts, investment trusts or investment funds of any description wherever located;"

SENATOR S. SYVRET

REPORT

The proposed inclusion of a *de minimis* limit on holdings below which profit will not be imputed to the holder is both an ethical and intellectual nonsense. It is open to substantial abuse in a number of situations. Only one of these abuses has been acknowledged by the Finance and Economics Committee namely the possibility that a family could split its holding widely so that no member holds more than 5% of the equity in a private company. For this reason the Report accompanying P.44/2005 makes it clear in paragraph 3, page 45 that the *de minimis* limit will not apply to private companies in order to avoid such abuses. So why re-state 'private companies' in the amendment? It is the proposition that the Assembly is being asked to approve, not the report. Part (b) of the proposition makes express reference only to the outline summary on page 47. Whilst the summary makes fleeting reference to a *de minimis* limit in respect of multi-national companies, it does not contain an explicit commitment to no *de minimis* limit on holdings in private companies. For the avoidance of doubt, private companies must be included in the wording of the proposition. But why should we take explicit action to stop only this single pathway of abuse when so many others very obviously exist? The plain fact is that any *de minimis* limit will be open to substantial abuse, especially so if it does not apply to capital roll-up devices. The amendment seeks to remove the *de minimis* limit in respect of publicly quoted companies, this is because a wealthy individual could easily hold all their wealth in the shares of quoted companies and never have income imputed or attributed to them because of –

(a) the size of that holding almost invariably being less than a *de minimis* limit if set at 5%;

(b) a choice to invest in companies that either do not pay dividends or distribute almost none of their profit, the return instead being provided through the sale of rolled up capital gains.

But even this part of the amendment would not succeed in preventing massive avoidance because of the inevitable –

(c) decisions to invest in capital gains roll up funds, which are widely available in a variety of forms in many territories, which will ensure that an objective of using the *de minimis* limit to avoid tax is easily achieved.

This therefore requires that the availability of the *de minimis* limit within the look-through provisions should be removed – not only from company holdings but also from investment fund holdings of all types.

Since non-payment, or low payment, of dividends is now a standard business policy given shareholder's general preference to be taxed to capital gains, which in many administrations suffer lower rates of tax than income does, it would be exceptionally easy to create a tax free portfolio of investments within the proposed Jersey tax regime – given the absence of a capital gains tax – if any *de minimis* limit is applied to investments in privately and publicly quotes companies and all forms of investment funds. As such, given the general shift implicit in the new fiscal strategy from corporations to individuals, it must be the case that the look through provisions must apply to all holdings of all sizes and types if the concerns regarding equity and progressiveness expressed by Oxera, the Crown Agents and the States in their publications on this strategy are to be honoured. This amendment ensures that this is the case.

In presenting this amendment it is noted that The Finance and Economics Committee state that their proposed *de minimis* limit "is to ensure that Jersey residents are not placed in the absurd position of having a proportion of the profits of multi-national companies, such as BP or Marks & Spencer, assessed on them as personal income." And yet the Committee does not explain what qualitative difference there is supposed to be between 5.1% in a quoted company of limited value, which is imputed, and 4.9% in a quoted company which is of substantial value, but which is not imputed under their proposal. If there is an absurdity, it is in the proposals made by Finance and Economics. In the Committee's view it is not 'absurd' to impute income to an individual who holds 5.1% in a company – even if that company is of limited size and value, but suddenly and magically it becomes "absurd" the instant the holding in a company becomes 4.9% – notwithstanding the fact that the company in question may be large and of massive value. The proposal of the Finance and Economics Committee is literally incredible.

The inclusion of *any de minimis* limit can only create a loophole or allowance of the exact type which it is said

must be avoided in the case of the GST to ensure the ‘consistency and efficiency’ of that tax. The same principle applies to the new income tax rules, and as such no such loopholes or allowances should be made available, and accordingly no *de minimis* limit should be provided for any shareholding or other holding of any size in any type of company or investment fund.

Financial and manpower statement

There will be no additional manpower requirement to that already needed to enforce the both the look through provision and the taxing of dividend payments envisaged in the Committee’s own proposals.

Given the massive scope for avoidance furnished by the *de minimis* limit, its removal is likely to lead to a very substantial increase in States revenues.