STATES OF JERSEY

TAX STRATEGY: COLLECTING COMPANY INFORMATION – WHITE PAPER OCTOBER 2012

Presented to the States on 25th October 2012
by the Minister for Treasury and Resources

STATES GREFFE

Treasury and Resources Department

White Paper

Collecting company information

24th October 2012

PURPOSE OF CONSULTATION

The purpose of this consultation is to propose how the Government of Jersey could collect the information necessary to develop its tax strategy.

When the current company tax regime was introduced in 2009, most Jersey companies became subject to income tax at the new general rate of 0%. As a result, the obligation on these companies to submit information to the Taxes Office was reduced. Since 2009, companies have been required to submit details of their income and expenses only where they have income that is subject to tax at either 10% or 20%.

The Government needs better data so that it can understand both the nature of the activities being undertaken in the Island and the profitability of the companies undertaking those activities.

Recent scrutiny of the company tax regime by the EU Code of Conduct Group reinforced the need for the Island authorities to have reliable data on the activities of companies in Jersey.

It is proposed that the additional information needed to inform decisions about tax policy will be collected by the States of Jersey Statistics Unit. The Statistics Unit has complete operational independence in producing and publishing official statistics; it has an independent oversight group, and is the central statistical office for the States of Jersey.

The Statistics Unit issues a number of surveys and questionnaires to companies each year. It is proposed to insert new questions into these surveys to collect information that is more relevant for tax purposes. It is considered that this approach strikes a reasonable balance between the competing need of the States to collect useful information with the need of both the States and businesses to keep additional administration to a minimum.

Completion of these questionnaires is, however, voluntary. If insufficient information is collected in this way, it will be necessary to consider ways of making it mandatory to provide data, whether by requiring all companies to submit a return disclosing details of their profits to the Comptroller of Taxes, or in some other way.

It is not intended to obtain information on an individual company basis, but sufficient information to determine an approximate level of profits for companies that pay income tax at the 0% rate, so as to better understand the economy. The data currently collected centrally is insufficient for this purpose.

All information compiled by the Statistics Unit is treated with the strictest confidence and is only used by the Unit to produce aggregate numbers. Furthermore, individual company, household or personal information is not passed by the Statistics Unit to any other States department or third party.

The other main options which have been considered for gathering such data have been set out in Section 5.

Respondents are invited to comment on this proposal by answering the questions set out at the end of the Paper.

Public submissions – Please note that responses submitted to all States public consultations may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a final published report, reported in the media, published on a States of Jersey website, listed on a consultation summary, etc.). If a respondent has a particular wish for confidentiality, such as where the response may concern an individual's private life, or matters of commercial confidentiality, please indicate this clearly when submitting a response.

HOW TO RESPOND

The deadline for responses is **5p.m. on 25th January 2013**.

All respondents should indicate the capacity in which they are responding (i.e. as an individual, company, representative body).

If you are responding as a company or representative body, please indicate the nature of your business and/or your clients' business.

Representative bodies should identify who they are responding for and how they gathered responses.

Please send your responses and any additional comments to:

Tax Policy Unit

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Heather Bestwick at Jersey Finance Limited is co-ordinating a finance industry response that will incorporate any matters raised by local firms or entities. Her contact details are:

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It is the policy of Jersey Finance to make individual responses it receives available to the Treasury and Resources Department upon request, unless a respondent specifically requests otherwise.

1. INTRODUCTION

1.1 Jersey taxes companies on a residence basis, so that residents of Jersey are liable to pay tax in Jersey on all their income, wherever in the world it arises. Non-residents are, broadly, liable to Jersey tax only on income arising in or derived from the Island.

1.2 A company is broadly considered resident in Jersey for tax purposes if it is incorporated in the Island, or if it is centrally managed and controlled from Jersey.

1.3 A company resident in Jersey is subject to Jersey tax, albeit that the rate of tax applied in most cases is 0%. References to "Jersey companies" in this White Paper refer to Jersey resident companies, regardless of their place of incorporation. References to "offshore companies" refer to companies that are resident in Jersey but incorporated elsewhere. Until the current company tax regime was introduced in 2009, these companies were not treated as resident and therefore not subject to tax except on Jersey income.

1.4 In order to support the States of Jersey's tax policies, it is necessary to improve the collection of information regarding the activities of all companies resident in Jersey.

1.5 Prior to the introduction of the current company tax regime, some companies, notably those which were treated as exempt from tax, were not required to file accounts with the tax authorities.

1.6 With the introduction of the current company tax regime in 2009, the majority of Jersey companies became liable to income tax at the rate of 0% for the first time. From 2009 onwards, information on profits earned was no longer requested from the majority of Jersey companies and the data available to the Taxes Office is frozen at that point.

1.7 Data from 2008 is particularly unsuited to analysis because the 2008 tax year of assessment was based on a combination of the profits of accounting periods ending in 2007 and 2008, in preparation for the introduction of the current company tax regime in 2009. 2007 and 2008 are not considered suitable for meaningful comparisons with profitability today, as for many companies 2007 was the last year of the economic boom before the effects of the economic crisis began to truly be felt in 2008. The available information is likely to represent profits inflated above 2012 levels and for some years to come.

1.8 Due to the regime in place prior to the introduction of 0/10 and the changes arising from the introduction of the current company tax regime, the amount of data available on activity from Jersey resident companies is inadequate to properly inform future tax policy development.

2. INFORMATION REQUIRED

2.1 When the current company tax regime was introduced, it was considered that the system should be given time to bed down, so that companies could become used to it. Jersey's tax system had not changed for a considerable period of time, and it was considered important that the system be allowed time to become familiar to businesses.

2.2 It was also considered that the administration of the company tax regime should have as light a touch as possible, to minimise the impact on companies and on the Taxes Office. Therefore, only information which was relevant or potentially relevant to income tax liabilities should be routinely collected.

2.3 However, it has become clear that this policy may result in important information going uncollected.

2.4 **Informing Jersey's future tax policies**

2.4.1 Firstly, Jersey needs to better understand what profits are being earned in the Island. A great deal of information is currently collected from a number of sources, but it is not ideal for the purposes of establishing the tax-adjusted profits, and hence, the impact of company tax policy changes.

2.4.2 Any future reform of Jersey's company tax system will be limited by the lack of data available, as it is currently difficult to say with any degree of accuracy how much tax revenue would be collected.

2.4.3 The position in relation to offshore companies is even more limited, as no information is currently routinely collected regarding their activities or profitability. Companies incorporated in Jersey are required by the Companies Law to prepare accounts on a regular basis. However, there is not an obligation to file these accounts in all cases.

2.4.4 The zero/ten tax model has been established to comply with the European Union Code of Conduct on Business Taxation. Under the current company tax regime, the general rate of company income tax charged to the majority of companies in Jersey, on the majority of profits earned, is 0%.

2.4.5 Should it be decided in future to increase the scope of the 10% or 20% income tax bands for companies, policymakers will need to understand how much scope exists for doing so. Collecting more accurate information on the profits earned by companies in the Island will help with this.

3. FURTHER CONSIDERATIONS

3.1 The need for the States to collect more detailed information on companies and their profits must be weighed against the increased compliance and administration work for companies. There is no desire to unduly increase the cost for trust companies which administer a large number of corporate clients, and which would be expected to provide information on their behalf. It is recognised that a change which creates excessive additional cost would damage Jersey's trust industry and could affect Jersey's ability to attract this type of business.

3.2 Clients may also be sensitive about information being provided which has not been requested in the past. That said, as Jersey's network of Tax Information Exchange Agreements (TIEAs) expands, the Comptroller of Taxes has the power to obtain information on any company in Jersey.

4. IMPROVING THE INFORMATION COLLECTED BY THE STATISTICS UNIT

4.1 The States of Jersey's Statistics Unit is the *de facto* National Statistics Office for Jersey, producing official statistics on the Island's economy and population, including social and environmental statistics.

4.2 A key measure produced by the Statistics Unit is the performance of the Island's economy through estimation of Gross Value Added (GVA) and Gross National Income (GNI). These measurements relate to economic activity conducted on Island by resident institutions (GVA), as well as income transfers to/from the rest of the world (GNI).

4.3 Information on offshore companies is not included in either GVA or GNI since offshore companies, for the most part, are either non-resident or have limited economic activity in Jersey.

4.4 Data collected by the Statistics Unit through surveys is provided voluntarily by businesses, households and individuals. The only exception is the census of the population which is covered by the Census (Jersey) Law 1951.

4.5 All information compiled by the Statistics Unit is treated with the strictest confidence and is only used by the Unit to produce aggregate numbers. Furthermore, individual company, household or personal information is not passed by the Statistics Unit to any other States department or third party.

4.6 To reinforce such assurances of confidentiality, Jersey's Chief Statistician (the head of the Statistics Unit) is a Chartered Statistician, and as such must comply with the Code of Conduct of the Royal Statistical Society.

4.7 It is proposed that information on foreign incorporated companies and formerly exempt companies be collected through the Survey of Financial Institutions which the Statistics Unit runs on an annual basis. This survey selects companies on a random basis stratified by size (manpower). Response rates and coverage have been high throughout the last 2 decades.

4.8 It is proposed to reinstate in this survey a question for trust and fund administrators, asking respondents to identify the number and type of entities administered (e.g. trust, Jersey incorporated company, non-Jersey incorporated company, limited partnership, etc.), together with a request for respondents to estimate the net profits earned by these entities in the period covered by the survey.

4.9 In addition to the above survey, the Statistics Unit conducts an Annual Business Inquiry of non-finance sector businesses. This Inquiry focuses on collecting data required for producing the national accounting aggregates, GVA and GNI.

4.10 It is proposed to include in the Annual Business Inquiry of non-finance companies a question relating to net profits earned in a given period.

4.11 Completion of both the Survey of Financial Institutions and the Annual Business Inquiry is voluntary. It is hoped that businesses will appreciate the need for this data and be prepared to respond.

Questions for respondents:

1. What would the impact be on your business, and on companies using Jersey as a whole, of expanding the information collected by the Statistics Unit as indicated above?

2. What additional burden do company administrators consider that disclosure of a net profit figure for all companies administered would create? Is such a burden likely to discourage completion of the survey?

3. If the data requested was based on sector, bands of profits and numbers of companies within each band, would that create a significant administrative burden on trust and company businesses? If so, what level of detail could be provided?

4. If the rate of voluntary compliance was insufficient, what measures could be taken to improve compliance rates? Are either of the other options considered below acceptable or preferable?

5. OTHER OPTIONS CONSIDERED AND REJECTED

5.1. Enhanced income tax returns for all companies

5.1.1. Article 16 of the Income Tax (Jersey) Law 1961 requires any person (individual, company, partnership, etc.) if required to do so by the Comptroller of Taxes to provide information of the taxable profits arising, regardless of the rate of tax applied to those profits or gains.

5.1.2 Currently, all companies resident in Jersey are required to submit an annual tax return showing details of profits subject to tax at 10% and 20%, together with details of Jersey resident shareholders where they hold an interest of 2% or greater in the company. For practicality, and in order to minimise administration for companies whose liability is nil, the Taxes Office will accept a global return from the administrators or agents of companies which are not incorporated in Jersey, confirming they have no profits subject to tax at a rate higher than 0% and that no Jersey resident holds an interest in the company. These global returns do not require signature by an officer of the company in question and therefore do not create an obligation on the company or its directors to disclose complete or accurate information in the same way as would a signature on a full return. Given that there is no tax at stake, this does not put tax revenues at risk.

5.1.3 Consideration has been given to amending the tax return to require all companies to include details of their profits subject to tax at 0% and the source of these profits. This would be a relatively simple administrative change for the States which would not require new legislation to be enacted before being put into practice.

5.1.4 The Isle of Man has similar annual company return requirements; it was therefore considered that the extra administration for companies would be acceptable.

5.1.5 However, creating new electronic records on the Taxes Office system for an additional 12,000 to 18,000 companies would be a resource-intensive process. Merely issuing the additional paper tax return forms would be costly. In order to minimise the additional resource requirements for the Taxes Office, the current global return facility could be retained for companies incorporated overseas, but with an additional requirement to report the amount and nature of profits made by each entity. Alternatively, administrators could be permitted to provide an aggregated profit figure for all the foreign incorporated companies administered, instead of disclosing each company’s profit.

5.1.6 In order to ensure that information could be analysed without committing excessive additional resources, it would be necessary to require electronic returns. Developing a system to allow this and permit analysis of the data generated would involve significant initial investment.

5.1.7 It is also recognised that this would create a substantial administrative and cost burden to company administrators, in particular the extra level of risk management required in completing such returns.

5.1.8 On balance, it is considered that the additional administration requirement on the Taxes Office and burden on businesses of an additional 12,000 to 18,000 companies’ tax returns made this a less preferred option. However, this option remains, should it prove impossible to collect the necessary information voluntarily through the Statistics Unit.

5.2 Requirement to submit accounts to the Registrar of Companies

5.2.1 All companies incorporated in Jersey are required to prepare accounts no later than 10 months after the end of their financial period (7 months in the case of public companies).

5.2.2 There is, however, no obligation for private companies to submit accounts to the Registrar of Companies or any other governmental body or agency. While companies carrying on a regulated activity may need to submit accounts and other financial data to the Jersey Financial Services Commission (JFSC), this is not required for unregulated companies.

5.2.3 The JFSC may share the information it collects with States departments in certain circumstances, through its joint role of regulator and registrar of companies. That being said, it collects information for specific purposes connected with its regulatory or registry activities, and it may not be considered the most appropriate body for collecting information ultimately intended to be used for tax purposes.

5.2.4 Additional staff resources would be needed to deal with the additional returns required, although the JFSC would be expected to automate as much of the process as possible. The cost of this additional resource would be likely to be met by additional income from the additional filing fees payable by affected companies. This fee is currently £25 per company and there are penalties for the late filing of accounts. Additional resource would also be required to extract and collate the information from the accounts received.

5.2.5 While this option would allow the collection of information from companies taxed at 0% which are incorporated in the Island, it would not address the question of offshore companies which are neither registered nor regulated in Jersey. If there is no legal link to the Island, they are not bound by JFSC rules and could not therefore be required to submit information to the JFSC except voluntarily. As compliance with information requests from the JFSC would carry with it an additional administrative cost, it seems likely that many companies incorporated overseas would be reluctant to voluntarily report their profits to the JFSC.

5.2.6 In the absence of any exemptions from the rules, companies which are dormant or have no income, such as property holding companies like those used to hold share transfer properties or (j) category homes in Jersey, would be required to prepare and submit accounts.

5.2.7 There is a concern that requiring all companies to submit accounts would encourage companies to migrate. This could mean them leaving the Island altogether, or merely migrating to another jurisdiction with no account filing requirement (such as Guernsey or the British Virgin Islands). The management, control and administration functions could remain in Jersey, allowing the company to continue as before, except the company would no longer be subject to Jersey law.

5.2.8 As a result, Jersey would lose the annual company return fee payable by the company, the ability to obtain much information from the company, and possibly the administration work associated with it.

5.2.9 Given that requiring all companies to file accounts with the JFSC would not address the issue of offshore companies incorporated elsewhere but resident in Jersey, and the risk of losing business, this option is not considered feasible at present.

6. QUESTIONS FOR RESPONDENTS

1. What would be the impact on your business, and on companies using Jersey as a whole, of improving the information collected by the Statistics Unit as detailed in this paper?

2. What additional burden do company administrators consider that disclosure of a net profit figure for all companies administered would create? Is such a burden likely to discourage completion of the survey?

3. If the data requested was based on type of entity, activity, bands of profits and numbers of companies within each band, would that create a significant administrative burden on trust and company businesses? If so, what level of detail could be provided?

4. If the rate of voluntary compliance was insufficient, what measures could be taken to improve compliance rates? Are either of the other options considered acceptable or preferable?