

SCHEDULE A

The Taxation of Immovable Property

Changes in Schedule A

1. When income tax was introduced in Jersey the Income Tax Law copied English legislation. Different sources of income were assessed under different schedules. Property in all lands, tenements, hereditaments and heritages in the Island capable of actual occupation were assessed under Schedule A. I attach (Appendix A) copies of Articles 51 to 55 of the original Law.

The First Principal Change

- 2.1 Some years ago the provisions of Schedule A in England were amended and owner occupiers of property ceased to be charged to income tax under Schedule A. However, the Government introduced a Poll Tax. This form of taxation was particularly unpopular and it has been replaced by a Council Tax.
- 2.2 The States followed the example of England and added a paragraph (numbered 4) to Article 51.

“4. Tax under this schedule shall not be charged in respect of that part of any lands, tenements, hereditaments or heritages which is occupied by the owner thereof”.
- 2.3 Although Jersey followed the example of England by granting exemption from Schedule A Income Tax to the owner and occupier of land and buildings it did not replace Parish Rates by another form of taxation.

Parish Rates

- 3.1 Parish Rates which are payable in Jersey are very significantly less than the Council Tax levied on owner occupiers of property in England.
- 3.2 Prior to 2003 the occupiers rate (the occupiers quarters) were fixed at the rental value and the foncier (the owners) quarters at a smaller amount. For example, in the Parish of St. Clement a property assessed at a rental value of £22,400 would have had a rateable value of 33,600 quarters made up as follows:-

Foncier quarters	11,200
Occupiers quarters	<u>22,400</u>
	<u>33,600</u>

Changes were introduced by the Parish Rate (Administration) Jersey Law 2003. The 2003 Law did not allow any reduction for repairs, insurance and decoration which meant that the foncier quarters became the same as the occupiers quarters and both were the equivalent of the rental value £22,400.

- 3.3 The Rating Law was amended again by the Rates (Jersey) Law 2005 which introduced an island-wide rate.

For example the rates payable in the Parish of St. Clement for 2005 were made up as follows:-

Rates payable on 'domestic property'		Rates payable on 'non-domestic' property	
St. Clement Parish Rate	0.82p	St. Clement Parish Rate	0.82p
<u>Island-wide Rate</u>	<u>0.62p</u>	<u>Island-wide Rate</u>	<u>1.11p</u>
<u>Total 'domestic' Rates</u>	<u>1.44p</u>	<u>Total 'non-domestic' Rates</u>	<u>1.93p</u>

The rental value of £22,400 remained the same and the rate actually payable by an owner-occupier on a rental value of domestic property of £22,400 would be :-

St. Clement Parish Rate	£367.36
Island-wide Rate	<u>£277.76</u>
Total:	<u>£645.12</u>

- 3.4 The Council Tax payable in, for example, Sussex for a property in band G having a capital value between £160,000 and £320,000 amounts to £2,347 compared with £645 payable in Jersey for a property in St. Clement with a rental value of £22,400.

The owner and occupier of property in Jersey is fortunate indeed when compared with someone in England who owns and occupies the property in which he or she lives.

The Basis of Assessment under Schedule A today

4. I attach (Appendix B) copies of Articles 50 to 54 of the current Income Tax Law. The principal difference between the Law at present and as it was before it was amended (Appendix A) is in Article 55, the “persons chargeable”. In simple language the persons or bodies now assessed are only those who receive rent (profits or gains) from the property.

A Recommendation

- 5.1 I recommend that the Law be changed so that “persons or bodies” who own or occupy property are assessed under Schedule A in a manner similar to that which existed prior to the Law being amended in both England and Jersey.
- 5.2 The principal benefit in kind which is enjoyed by the more prosperous residents in the Island is the occupation of the property which they own. Unlike other benefits in kind this benefit is not taxed.

- 5.3 I believe that social justice would require a threshold below which the rental value would not be assessed to income tax. A possible threshold might be £10,000. This would mean that the owners of most flats in Jersey would not be assessed to income tax if they owned or occupied a flat. Properties in the Clos du Rivage estate in Gorey are currently assessed at a rental value by the Parish of St. Martin at £10,580. These are three bedroom houses with a garage and a small garden at the rear and in the front of the property. They are semi-detached houses.

If the owner and occupier of one of those properties is assessed to tax under Schedule A at the excess of the rental value over a suggested threshold of £10,000 the Income Tax payable on £580 at 20% would amount to £116. The owner of a more valuable property in St. Clement assessed at a rental value of £22,800 would pay tax of £2,560. The more prosperous residents of the Island would contribute more to the Revenue because of the benefit in kind which they enjoy from living in a valuable property.

- 5.4 I do not believe that this proposal would have a material effect on individuals who were "asset rich but cash poor" if provision is made for the threshold which I have suggested. However, the better off individuals who live in valuable properties would have to pay more and I believe that they should do so. They are, for example, in a particularly favourable position compared with someone who has to pay rent for the property which he occupies.

- 5.5 I do not believe that it would be difficult to administer. Every individual who owns property receives a parish rental assessment and it is not difficult for the taxpayer to note the rental value on income his income tax return. This was of course the position before the Law was amended. It is also relatively easy for the Tax Department to select a sample of returns which they could compare with the parish returns.

- 5.6 I have suggested (paragraph 5.3) a possible threshold of £10,000. If the principle of assessing the benefit in kind of owning and occupying property to income tax has any merit and if a threshold is to be introduced there exists a spread of thresholds which should be considered. For example a threshold of £15,000 might be introduced or a threshold of £10,000 and the excess over £10,000 might be assessed at a rate of 10% up to an amount of £15,000 and thereafter a rental value in excess of £15,000 might be assessed at the rate of 20%.
- 5.7 In order for the Treasury to make a recommendation it would be necessary to list all the rental values established by the Parish authorities and then to prepare comparative schedules showing the additional tax that would become payable. This sort of exercise would also produce other statistical information – for example it would be of assistance to know the number of individuals who would avoid paying any additional tax and the number of individuals who would fall within different brackets of additional tax.

Schedule A and the 0/10 Design Proposal

- 6.1 There has been criticism of the 0/10 design proposal because companies which trade in Jersey will not suffer income tax and, if the shareholders or parent company are not resident in Jersey, they also will not pay income tax in Jersey.
- 6.2 If income tax under the provisions of Schedule A became payable by the owner and occupier of property which is used for commercial purposes then companies which trade in the Island will be required to pay income tax on the rental value of their property.
- 6.3 I suggest that there should be no threshold for commercial properties and the company which trade in those properties should suffer income tax under Schedule A on the rental value established by the Parish.

- 6.4 This is an alternative to the RUDL charge and will result in those companies which own and occupy the properties in which they trade in making a worthwhile contribution to the Island Revenue.
- 6.5 No additional tax will however be payable by trading companies not owned by Jersey residents which trade in the Island and which pay rent.
- 6.6 I recommend therefore that all lessees and tenants be required to deduct income tax from the rent that they pay at the standard rate of 20% with the exception of rent payable to UK superannuation funds and charities. The lessee or tenant should then account for the tax deducted to the Comptroller of Income Tax in a manner similar to that whereby tax is paid to the Island Treasury under the Income Tax Instalment System.
- 6.7 This recommendation (paragraph 6.6) would mean that those companies described in paragraph 6.5 above would contribute to the Island's revenue even though the owner of the property might be resident elsewhere.

The Avoidance of Double Taxation

- 7.1 The position of the Jersey resident who receives rent after deduction of income tax presents no problems. He will be in the same position as that which prevails at the present time in respect of dividends or loan interest received after deduction of income tax. He should be allowed to claim relief for expenditure of a revenue nature incurred on the property. He will not suffer any additional income tax liability.
- 7.2 The position will however be different for Jersey residents who hold shares in a company trading in Jersey which owns and occupies its property. The profit of the company deemed to be available for appropriation to him and vulnerable to tax should be reduced by the Schedule A assessment. This is the position which

prevailed prior to the amendment to Article 51 of the Jersey Income Tax Law (paragraph 2.2).

7.3 In my opinion a UK resident, whether a body corporate or an individual, would be entitled to double taxation relief in respect of the income tax deducted from the rent received or assessed under the provisions of Schedule A.

7.4 Paragraph 9 of the double taxation agreement between the UK and Jersey provides that:-

“9. – (1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Jersey tax payable, whether directly or by deduction, in respect of income from sources within Jersey, other than dividends or debenture interest payable by a company resident in Jersey, shall be allowed as a credit against any United Kingdom tax payable in respect of that income.”

The Avoidance of Income Tax

8. If the principles of these recommendations are adopted it might be possible for a taxpayer to establish a rent below the full commercial rent. I recommend that the Comptroller of Income Tax should have the authority to increase the Schedule A assessment or to make a Schedule A assessment being the difference between the rent payable and the full commercial rent.

The Individuals or Companies that would be Assessed to Income Tax if these Recommendations are Adopted

9.1 For the avoidance of doubt income tax assessments would be raised on all individuals or companies which own and occupy property in Jersey whether they are resident in Jersey or elsewhere and all individuals or companies which receive

rent from property in Jersey would suffer income tax deducted at source at the rate of 20% whether those individuals are resident in Jersey or elsewhere.

- 9.2 For reasons that have been canvassed elsewhere I recommend that Superannuation Funds and Charities should continue to be exempt from income tax in Jersey on income which would otherwise be assessed to income tax under the provisions of Schedule A.

ARTICLE 51.

SCHEDULE A.

The Schedule referred to in this Law as Schedule A is as follows—

1. Tax under this Schedule shall be charged in respect of—

- (a) the property in all lands, tenements, hereditaments and heritages in the Island capable of actual occupation, for every twenty shillings of the annual value thereof; and
- (b) all profits arising from annual payments of rente, for every twenty shillings of the annual amount of the profits.

2. The annual value for the purposes of this Schedule shall, in the case of all lands, tenements, hereditaments or heritages, of whatever nature and for whatever purpose occupied or enjoyed, be understood to be—

- (a) the amount of the rent by the year at which they are let at rack-rent; or
- (b) if they are not let at rack-rent, then the rack-rent at which they are worth to be let by the year.

3. The annual amount of profits for the purposes of this Schedule shall, in the case of rentes, be understood to be the amount receivable, whether received or not.

ARTICLE 52.

DEDUCTIONS UNDER SCHEDULE A.

The following deductions and allowances shall be made under Schedule A in respect of the property in lands, tenements, hereditaments and heritages—

- (a) all parochial rates or taxation which by law are charged on the owner;
- (b) any parochial rates, taxes or assessments which by law are charged on the occupier and which the landlord is subject to an agreement to pay or satisfy out of the rent reserved on any land or tenements;
- (c) an allowance in respect of repairs, calculated upon the annual value of any house or building but excluding the annual value of land—
 - (i) where the owner is occupier or where a tenant is occupier and the landlord undertook to bear the cost of repairs, a sum equal to forty per centum of such value;
 - (ii) where a tenant is occupier and the landlord undertook to bear the cost of a portion of the repairs, a sum equal to twenty per centum of such value;
- (d) an allowance in respect of rentes payable on the property, on condition that the owner supplies the Comptroller in each year with a detailed list of all such rentes.

ARTICLE 53.

ALLOWANCE FOR LOSSES.

(1) Where land has been let at a reserved rent and loss has been sustained on the growing crops or stock on the land, and the owner proves that he has in consideration of such loss allowed or agreed to allow to the tenant an abatement of the whole or any part of the rent payable, a proportionate abatement in

the assessment under Schedule A shall be made for the year for which the abatement of rent has been made.

(2) Where any such loss is sustained on land in the occupation of the owner, on proof of the loss, a like abatement and discharge of tax may be made under Schedule A as might have been made if the land had been let to a tenant and the owner had made such abatement in rent.

ARTICLE 54.

UNOCCUPIED PREMISES.

Tax under Schedule A shall be charged on all lands, tenements and hereditaments, whether occupied at the time of assessment or not, but if any house or land is or becomes unoccupied for the year or for part of the year of assessment, the tax shall not be levied thereon in respect of the period while it is so unoccupied.

ARTICLE 55.

PERSONS CHARGEABLE.

Save as in this Law provided, tax under Schedule A shall be charged on and paid by the owner for the time being.

PART 8

SCHEDULE A AND PRINCIPAL PROVISIONS RELATING THERETO

50 Interpretation of Part 8⁷⁰

In this Part –

“land” includes buildings, tenements, heritages and hereditaments;

“lease” includes an agreement for a lease, and any tenancy, but does not include a hypothec or other charge;

“owner” means, in relation to any land, the person for the time being having the enjoyment of that land, either as owner or usufructuary owner or in the exercise of rights of dower, franc veuvage, seignioralty or otherwise;

“premium” includes any like sum, other than rent, paid, and the value of any consideration given, on or in connection with the granting of a tenancy, except insofar as other sufficient consideration for the payment is shown to have been given.

51 Schedule A⁷¹

The Schedule referred to in this Law as Schedule A is as follows –

1. Tax under this Schedule shall be charged on the annual profits or gains arising in respect of any rents or receipts as follows, that is to say –
 - (a) rents under leases of land in Jersey;
 - (b) rentes; and
 - (c) other receipts arising to the owner of land in Jersey from, or by virtue of, the owner's ownership of that land:

Provided that tax shall not be charged under this Schedule in respect of any interest of money.

2. Tax under this Schedule shall be charged by reference to the rent or receipts to which a person becomes entitled in the year of assessment.
3. If rent is payable under a lease under which the tenant is entitled to the use of furniture, and tax in respect of the payment for its use is chargeable under Schedule D of this Law, tax in respect of the rent shall be charged under Schedule D instead of under this Schedule:

Provided that the person charged or liable to be charged shall be entitled, on giving notice in writing to the Comptroller within 2 years after the end of the year of assessment, to elect that this paragraph shall not apply and where such notice is given, there shall be made such additional assessments, reductions of assessments or repayments of tax as the case may require.

52 Deductions under Schedule A⁷²

- (1) Subject to the provisions of this Article, in computing the amounts of the profits or gains to be charged under this Schedule, there shall be deducted the normal outgoings paid by the person chargeable in respect of the profits or gains.
- (2) For the purposes of paragraph (1), the term "normal outgoings" means the following payments, not being payments of a capital nature, made in respect of the land to which the profits or gains relate, that is to say –
 - (a) payments for maintenance, repairs, insurance and management;
 - (b) parochial rates, including rates which are by law charged on the occupier which the person chargeable is obliged to defray; and
 - (c) rents, rentes or other periodical payments:

Provided that no deductions shall be made for any interest of money, or any annuity or other annual payment.

- (3) In the case of –
 - (a) payments for maintenance and repairs, deductions shall be made for payments incurred by reason of dilapidation to the extent only that the dilapidation is attributable to a period falling within the currency of the lease, or to a period during which the person chargeable was the landlord in relation to a previous lease;
 - (b) other payments, deductions shall be made only for payments incurred in such a period as aforesaid;
 - (c) a receipt other than rent payable under a lease, there shall be deducted so much of any other payment made by the owner as constituted an expense of the transaction.
- (4) The deductions allowable under this Article shall be made from the profits or gains chargeable for the year of assessment in which the payments are made:

Provided that where the profits or gains chargeable are not sufficient to allow the whole of the deductions to be made, the amount not deducted shall be deducted from the profits or gains for the earliest year of assessment from which it can be deducted.

53 Relief for rent not paid⁷³

If a person proves that he or she has not received an amount which he or she was entitled to receive in respect of any rents or receipts chargeable under Schedule A, and that –

- (a) the non-receipt was attributable to the default of the person by whom it was payable and the person chargeable has taken all reasonable steps available to him or her to enforce payment; or
- (b) the person chargeable has waived payment of the said amount without consideration and in order to avoid hardship to the person by whom it was payable,

the person chargeable shall be treated as if he or she had not been entitled to the said amount.

54 Treatment of premiums and other payments as rents ⁷⁴

- (1) If payment of any premium is required under a lease, or otherwise under the terms subject to which a lease is granted and the duration of the lease does not exceed 50 years, the person entitled to the premium shall be treated for the purposes of this Law as becoming entitled when the lease is granted to an amount by way of rent (in addition to any actual rent and any other amount treated as rent under this Article) equal to the amount of the premium reduced by 1/50 of that amount for each complete period of 12 months (other than the first) comprised in the duration of the lease:

Provided that where the said premium is payable by instalments, the amount of each instalment shall be treated as rent for the year in which it becomes payable.⁷⁵

- (2) If, under any term subject to which a lease is granted, any sum is payable by a tenant as consideration for the surrender of the lease, the person

entitled to the consideration shall be treated for the purposes of this Law as becoming entitled, when the consideration is payable, to an amount by way of rent (in addition to any actual rent and any other amount treated as rent under this Article) equal to the amount of the consideration reduced by 1/50 of that amount for each complete period of 12 months (other than the first) comprised in the duration of the lease calculated to the day of surrender:

Provided that where the said consideration is payable by instalments, the amount of each instalment shall be treated as rent for the year in which it becomes payable.⁷⁶

- (2A) If any sum is payable by a tenant as consideration for the variation or waiver of any term of a lease, the person entitled to the consideration shall be treated for the purposes of this Law as becoming entitled, when the agreement for the variation or waiver is entered into, to an amount by way of rent (in addition to any actual rent and any other amount treated as rent under this Article) equal to the amount of the consideration reduced by 1/50 of that amount for each complete period of 12 months (other than the first) comprised in that part of the duration of the lease for which the variation or waiver has effect:

Provided that where the said consideration is payable by instalments, the amount of each instalment shall be treated as rent for the year in which it becomes payable.⁷⁷

- (3) If, in respect of a lease granted for a period which does not exceed 50 years, a premium is paid on the assignment of the lease or as consideration for the grant of a sub-lease, the person entitled to the premium shall be treated for the purposes of this Law as becoming entitled when the premium is payable to an amount by way of rent equal to the amount of the premium reduced by the appropriate fraction of any amount of premium chargeable as rent on the person by whom the lease was granted:

Provided that no reduction as aforesaid shall be made in respect of any premium which has been allowed as a deduction in computing the income of any person for income tax purposes.

- (4) For the purpose of paragraph (3), the "appropriate fraction" means the fraction arrived at by dividing the period for which the assignment or sub-lease is granted by the period for which the lease was granted.