STATES OF JERSEY

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DRAFT INCOME TAX (AMENDMENT No. 26) (JERSEY) LAW 200- (P.132/2006): AMENDMENT

Lodged au Greffe on 21st November 2006
by the Minister for Economic Development

STATES GREFFE

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PAGE 11 –

After Part 1 insert the following Part –

“PART 2

PLACE OF RESIDENCE OF COMPANY

2 Article 123 amended

For paragraph (1) of Article 123 of the principal Law there shall be substituted the following paragraph –

“(1) Except as provided in Article 123A –

(a) a company incorporated under the Loi (1861) sur les Sociétés à Responsabilité Limitée or the Companies (Jersey) Law 1991 shall be regarded as resident in Jersey unless its business is managed and controlled outside Jersey, in a country or territory where the company is charged to tax on its income (whether on the whole or part thereof) at a rate of 10% or higher;

(b) a company incorporated outside Jersey shall be regarded as resident in Jersey if its business is managed and controlled in Jersey.”.

3 Commencement of Part 2

This Part shall have effect for the year of assessment 2007 and ensuing years.”;

and renumber the remaining Parts and Articles accordingly.

MINISTER FOR ECONOMIC DEVELOPMENT

REPORT

The proposed amendment provides that a Jersey incorporated company will not be resident in the Island for tax purposes if its management and control is carried out in another jurisdiction, and the rate of tax payable by companies generally in that jurisdiction upon their income is greater than or equal to 10%.

Currently, many Jersey companies pay an annual exempt company fee of £600. This will be phased out as part of the “zero/ten” package of reforms. However, as it currently stands, a Jersey company that is exempt does not generally pay any income tax in the Island. Such a company is nevertheless regarded as being tax resident in Jersey.

Not infrequently, persons wish to use a Jersey company in structures where it will be tax resident in another jurisdiction. Currently, this can be difficult, as the Jersey company will, at best, be regarded as dual resident: in other words, resident in Jersey and in another jurisdiction. The proposed change would permit a Jersey company to be clearly non-resident in Jersey, and, by implication, solely resident in that other jurisdiction.

As a result of this change, Jersey companies would be able to act in a wider range of transactions. There would be a small loss to the Treasury in terms of a reduction in the number of companies paying the exempt company fee. It is not expected that this loss will be significant, and, in any event, the fee is due to be phased out in the near future. It is expected that this change would increase work being undertaken by financial services businesses in Jersey, and there will be an increase in other forms of taxation to compensate for the loss of exempt company fees.

A non-resident company will generally be resident and therefore subject to tax in another jurisdiction. Nevertheless, in order to ensure that moving jurisdiction is not motivated by a desire to avoid the exempt company fee, it is proposed that a Jersey company should only be regarded as being non-resident if its management and control is carried out in a jurisdiction with a corporate tax rate above a stated threshold: 10%. This rate of taxation has also been selected as it provides a general anti-avoidance measure at the time when zero ten is implemented.

It is not possible to limit the qualification for “non-residency” to companies that are currently exempt only. There is a risk that investment companies owned by Jersey residents could change the domicile of their management and control in order to avoid Jersey taxation. However, it is felt this risk is not significant: any Jersey residents motivated primarily by a desire to reduce their tax liability in Jersey would be most unlikely to have Jersey domiciled investment companies anyway, being likely to use companies domiciled in other jurisdictions in preference.

This amendment to the Income Tax Law will be of significant benefit to the finance industry in particular, in that it will permit Jersey companies to be used in a wider range of high value transactions than is currently the case. In terms of fiscal policy, it should be relatively neutral. It is for this reason that the change is proposed by the Minister for Economic Development, as the Minister with responsibility for ensuring that legislation is developed in a manner supportive of the sustainable development of the finance industry.

Financial and manpower statement

There are no financial or manpower consequences arising from the proposal.