STATES OF JERSEY

DRAFT FINANCE (2017 BUDGET) (JERSEY) LAW 201- (P.113/2016): COMMENTS

Presented to the States on 28th November 2016
by the Comité des Connétables

STATES GREFFE

COMMENTS

Determination of rateable values

The Report says that "*once the rateable value of a property has been determined it is almost impossible to have that rateable value changed. This is particularly the case where the rental value of a whole sector of property has changed (e.g. the relative decline in the rental value of retail property).*"

The debate over rateable values of land, and the subsequent freezing of the rateable value under the Parish Rate (Administration) (Jersey) Law 2003, goes back many years. A useful summary can be found in the Report to the draft Law in P.199/2002 which refers to a Working Party in 1977, another Working Party in 1992 (its report was eventually debated in 1994) and to the Parish Rates Working Party set up in July 1998 by the Legislation Committee. Issues which the latter Working Party identified were resolved by the States in June 2001 allowing the final draft of the 2003 Law to be produced.

The principal effect of the 2003 Law was that the existing Assessed Rateable Value of each property (expressed in Quarters) was frozen as at December 2003, i.e. the rateable value no longer alters every year unless changes are made to the property.

Since the rateable value was frozen, the assessment is based on the **attributes** of the property which are defined, in respect of land, as meaning the size, location, accommodation, condition and use of the land and the quality of any house, building or other structure in, on, under or over the land and NOT rental value.

Rental values within sectors can move both up and down over time. Following the freezing of rateable values the rental values of good agricultural land fell from £120 per vergée to £70 per vergée but this has since reversed with rental values increasing again. The question is whether rateable values should be recalculated because the relativity of rental values in different sectors has changed.

But this overlooks the fact that rental values are no longer relevant to the rateable value – the States took the decision to move away from rental values and, instead, to use the concept of 'attributes'. Nor is it explained why rental values should be the basis of assessment – in the Property Tax Review Green Paper (R.101/2014) consultees were asked about moving to taxing the consumer (i.e. the owner or the occupier) of land/property on its current value. The Connétables responded to the consultation and commented that no reason was given to explain why "current value" was a more valid basis than "attributes".

The report does not discuss the complexities of valuing property based on a monetary figure which will change each year (although a revaluation may only be made every few years). Considerable work had to be undertaken to 'convert' the methods based on rental value to ones that reflects the 'value' of the attributes. These complexities include –

1. The method for determining 'rental value' set out in the Parish Rate (Administration) (Jersey) Law 1946 was the "arm's length rent" so it was necessary to establish the terms of the lease when deciding whether the rental value should be, or should be adjusted to be, the rateable value –

"the rental value of the land shall be the rent at which it might reasonably be expected to let from year to year if the tenant undertook to pay the usual tenant's rates and if the landlord undertook to bear the costs of repairs and insurance and any other expenses necessary to maintain the land in a state to command that rent".

2. Commercial leases were often on a different basis and so had to be adjusted to determine the rateable value. For example public houses are often on a 'tied' rental basis.

3. The rental market was very limited in some commercial sectors, for example hotels and lodging houses. As a result the Parish Rate Appeal Board determined the use of the "profit's method" to assess the rateable value.

4. There is no rental market for utility companies. The Royal Court determined the Jersey New Waterworks Company should be assessed using the "profit's method". This was subsequently applied to the other utility companies and had to be calculated by professional valuers engaged from the United Kingdom.

5. There is a reasonable rental market for domestic property (lower and middle value properties) but some landlords e.g. the then Housing Department used 'fair rents' which were acknowledged to be below the market rent.

6. There was very little rental market for high-end value properties, in part as those qualifying under Housing Regulations 1(1)(k) were permitted to purchase but not to lease property.

Provision was specifically made in the 2003 law, and subsequently in Article 6 of the Rates (Jersey) Law 2005, for the States to make Regulations to provide a method of assessment in the case of land used for non-domestic purposes where there is no comparable land with which to make a comparison – an example would be land of the utility companies. In the event agreement has been reached between the Assessment Committees and ratepayers which avoided the need for complex Regulations.

Based on the experience in attempting to draft Regulations under Article 6 to cover utility companies, the Comité believes it is unrealistic for the Minister to suggest that Regulations could be brought to the States Assembly in early 2017.

The payment of rates is not directly linked to the provision of services to a ratepayer but is a local tax to meet the running costs of the Parish, or to fund the Island-Wide Rates (IWR). As the ratepayers share directly in funding those costs, any decrease for one sector will result in an increase for other ratepayers. There will be no change in the amount raised in rates – only in the distribution between ratepayers of different sectors.

The Comité is of the view that a revaluation should only be considered if it can be demonstrated that it will be beneficial. However it is not satisfied that this benefit has been quantified for any particular sector and nor has the impact on other sectors been calculated. Further, if land is to be revalued then all land should be revalued at the same date. As outlined above, this would be a complex undertaking and the Comité would not expect parishes to meet the costs of professional assistance should the States decide on this course of action.

It should be remembered that the Rates Law already provides a mechanism to "revalue" land. The law requires that rateable values shall be proportionate to attributes – that means the land with the best attributes shall have the highest rateable value and that the land with the poorest attributes shall have the lowest rateable value and so in proportion for land with attributes between those extremes. If a new office is built with better attributes (for example of a higher 'quality') than those of other offices, this should be reflected in the rateable value – the rateable value should be proportionately higher. Rateable values can be reviewed – at the request not only of the owner or occupier but also the Connétable, Supervisory Committee or a member of the Assessment Committee – in accordance with the provisions of Article 9 of the Law.

In the opinion of the Comité, the grounds for revaluing land have not been made and it does not support the proposal. **The Comité recommends that Article 16 in Part 2 be rejected**.

Parishes' and States' liability for rates

The Connétable of St. Helier has attempted, over many years, to ensure the States pays rates on its property.

The Minister for Treasury and Resources set up a Working Party to examine issues relating to the States' liability to rates on their properties and its report is in the Appendix to Parish Rates: The States' Liability (P.68/2008). The Conclusions and Recommendations are –

> *5.1 The Working Party concludes that the current position of the States not having a general liability for rates on their buildings is unsatisfactory and should not persist.*
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> *5.2 It recommends that that the States should, like other ratepayers, be liable for Parish Rates and Island Wide Rates on all their properties.*
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> *5.3 The Working Party is firmly of the opinion that the States should seek to absorb the additional cost of meeting their rates liabilities from within existing budget allocations, except where such costs form part of a charge that is recovered by end users of services.*
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> *5.4 The Working Party does not consider the associated administrative cost to be excessive but believes that the transaction process should be streamlined to minimise both Parish and States' resources in order that it is both efficient and effective. In order to avoid duplication of effort, and subject to States approval, such additional work should be undertaken in conjunction with proposals to implement an internal rent charging mechanism.*
>
> *5.5 The difficulties associated with absorbing the additional unbudgeted costs should not delay implementation of the Working Party's recommendations.*

It is absolutely clear that the various reviews related to the States paying both the parish rate and the Island-wide rate although the proposals in the Draft Finance (2017 Budget) (Jersey) Law 201- (P.113/2016) relate only to the payment of parish rates by the States.

But the views of the Connétables differ on the value of the States paying rates as can be seen from comments presented to the States in 2011 (see P.123/2011 Amd.(7) – comments) and again in 2013 (see P.40/2013 – comments) which included –

> *"The Comité des Connétables are not unanimous in their opinion of the value of the Connétable of St. Helier's proposition. Obviously it will affect the parishioners of some Parishes very differently to those of other Parishes. It will result in the ability of 2 or 3 Parishes to have a significant decrease in their rate due to the increased level of rateable quarters available to them.*
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> *Whilst accepting that the proposition seeks to restrict the method in which the cost can be funded, the majority of Connétables are of the opinion that ultimately the public will pay.*
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> *Furthermore, the proposition fails to properly identify the exact financial impact on the rate of each Parish, which might reduce or increase as a result, and also whether acceptance of this amendment would affect the ratio of the domestic rate and non-domestic rate in the Island-wide rate."*

The majority of the Connétables continue to hold the view that it is not appropriate to remove the exemption from land owned or occupied by a public authority and used exclusively for a public purpose unless a clear funding mechanism is presented which will enable the Assembly to judge the effect on other ratepayers of each parish, including those liable to pay domestic and non-domestic rates.

Further, the proposal to remove the exemption from foncier rates in respect of land used by the Minister for Education predominantly for the purposes of its undertaking amounts to a tax on education.

The incorporation of the Ports of Jersey and of Andium Homes Limited means that a significant part of the States property portfolio has already moved out of the 'exemption' for public authorities and so rates – both Parish and IWR – are now paid on all land. It should also be noted that the States and parishes have been paying rates for many years so there is already a circular payment of rates (in 2003 the Steering Group estimated the States did not pay on about 67% – so it did pay on 33%). This is because the exemption for each from rates in the Rates (Jersey) Law 2005 relates only to land "used exclusively for public or parochial purposes". In 2016 the States will have paid circa £113k in rates (this is Parish and IWR) across all parishes and the parishes will have paid circa £66k. Prior to the incorporation of the Ports of Jersey, and to the Housing Department becoming Andium Homes Limited, the rates paid were significantly higher. The Housing Department paid approximately £330,000 in rates to St. Helier alone in 2014, and the harbours and airport liability was circa £60,000 in St. Helier and St. Peter.

The Budget report estimates the States liability to Parish rates will be approximately £900k per annum based on the Parish rates charged in 2015 and "*It is hoped that this extra revenue will be used to enhance public facilities in the parishes.*" But there will be NO extra revenue!

Whilst the mechanism by which the rate per quarter is calculated may seem to be a mystery to some, it is clearly set out in the Rates Law.

Parish Ratepayers set a budget for the next year of £X. There are y quarters assessed for rates.

The rate per quarter which the ratepayers must agree to fund the budget they have set is £X/y quarters (expressed as pence per quarter).

So the payment by the States of Parish rates will only be "extra revenue" if the ratepayers increase the budget by that amount. If the budget is not increased the rate per quarter will reduce as there will be more quarters (i.e. those for States property) on which rates will be paid.

If the States liability for parish rates is to be recovered from taxation, who meets that cost? If the IWR is increased to cover the extra £900k this is funded by every ratepayer through the domestic and non-domestic rate – excluding the States if it remains exempt as proposed in the Budget. The non-domestic rate is approximately twice the domestic rate, so 'commercial' ratepayers (including the retail sector for whom a revaluation is sought) will contribute more per quarter, but domestic ratepayers will also see an increase in rates.

Any reduction in the parish rate per quarter in 2017 as a result of the States paying parish rates is therefore likely to be offset in 2018 by an increase in the IWR liability for domestic and non-domestic ratepayers. No figures have been produced to illustrate what the effect might be and, in the absence of these, it may be optimistic for ratepayers to expect a long-term reduction in rates.

Similarly, if parochial authorities are now to pay the Island-wide rate, the parish budgets will have to increase to provide the funds, and that in turn could result in an increase in the parochial rate per quarter.

The parochial authority will also apply to any parish rate – so if, for example, a parochial authority owns or occupies land in another parish it will be exempt from parish rates in that parish and not just exempt from its own parish rates.

The Comité informed both the Minister for Treasury and Resources, and the Chairman of the Corporate Services Scrutiny Panel, in writing, that it has always been of the view that Connétables should not take money from ratepayers to enable States Departments to pay their rates but rather Departments should regard rates as a utility bill and seek savings, or raise funds, to meet its liabilities.

Connétables are also mindful that ratepayers of rural parishes saw their rates almost double when the IWR was first introduced so a further increase is likely to be opposed and it could impact negatively on the lower quintile of domestic property. If an increase in the IWR is targeted at businesses, given that rates as a proportion of rents are significantly lower in Jersey than most of the United Kingdom, such an increase would adversely affect small businesses (see MTFP Addition for 2017-19 S.R.5/2016).

All other ratepayers have to pay both the Parish and IWR and the Rates Management System (RMS) has no facility to levy just one rate only. Introducing a split for one ratepayer – the States – will require amendments to RMS.

With the exception of the Connétable of St. Helier, all the Connétables –

- are therefore of the opinion that leaving a partial exemption from the IWR for the States, on property which is owned or occupied and used exclusively for a public purpose, does not satisfactorily address the primary goal of the States paying rates on an equity basis;

- consider that the implications for other ratepayers of the States paying parish rates have not been fully costed or satisfactorily funded;

- do not support the taxation of education by virtue of the payment of rates on States schools; and

- **recommend that Article 17 in Part 2 be rejected.**

The recommendation is therefore to reject Part 2 of the Draft Finance (2017 Budget) (Jersey) Law 201-.