States of Jersey

TAX REGIME FOR HIGH NET WORTH INDIVIDUALS

REVIEW 2013

October 2013

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Foreword – Minister for Treasury and Resources

The Tax Policy Unit was asked to produce an update report following the introduction in 2011 of the new tax regime for High Net Worth Individuals ("HNWI") which reviewed the success of the new regime and recommends, as appropriate, any further changes. This report is designed to maximize opportunities and examine the existing arrangements to ensure they are working as intended.

HNWIs are an essential part of Jersey's economy. When they move to Jersey they bring benefit to the Island through their direct tax contributions, on-island spending and often, through relocation of their businesses and subsequent job creation.

In July 2011 the tax system was amended to ensure that the Island continued to attract these sorts of residents and benefit from their wealth by removing the distinction between income arising in Jersey and elsewhere. It also aimed to simplify the tax rates applicable to HNWs, so that the process of relocating was easier to implement and understand.

Changes were also made to ensure that the Island would benefit more from attracting these individuals, by increasing the minimum annual tax contribution expected from HNWIs coming to Jersey from £100,000 to £125,000, and by creating a means to gain extra income from the wealthier HNWIs, with income of more than £625,000 per year.

So far this regime is working well. The perception now is that Jersey is 'open for business'. More economically active applicants are bringing their wealth and businesses to Jersey, which was the key purpose of the tax policy change. The number of licenses granted in 2012 was higher than in any of the last 4 years.

Having reviewed the existing data and available feedback to establish that the regime is working, this report proposes that the current system for new incomers remains in place without any major changes and is reviewed again after it has been in place for three years, as was intended. This will allow the full measure of the financial and economic benefit of the current policy to be assessed, and also ensure that a message of certainty and stability is presented to businesses and individuals considering Jersey as an option for relocation.

In addition, the report has highlighted some refinements that can be made to enhance economic growth, while progress of the regime is monitored, without unnecessary and disruptive change.

Firstly, the Income Tax Law will be amended in the 2014 Budget to allow certain pre 2011 HNWIs to transition to the 2011 tax regime, provided they meet certain criteria, for example, the capacity to enhance inward investment and create jobs. This would potentially encourage certain HNWIs to relocate their investment portfolios and active businesses to the Island, generating tax revenues, fees and economic growth through spend and employment.

Secondly, to ensure that the contributions maintain real value, the minimum contribution will be reviewed every three years with a view to increasing the HNWI's tax contributions in line with inflation.

The positive conclusion from this review is that the tax policy introduced in 2011 is working largely as was intended and producing measurable results that are benefiting Jersey's economy, which will be continuously monitored. Meanwhile the measure introduced in this year's budget takes another step towards creating economic growth.

Philip Ozouf

Senator Philip Ozouf
Minister for Treasury and Resources

8th October 2013

TAX POLICY UNIT REPORT

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NOTE: Reference to a 1(1)(k) also refers to an individual approved under 2(1)(e) of the new Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations). Reference to High Net Worth Individuals refers to existing residents or prospective residents who are granted a housing licence under 1(1)(k) or 2(1)(e) of the relevant Housing legislation.

Section 1: Introduction and aims of the review

This review of the tax regime that applies to High Net Worth Individuals (HNWIs) has been undertaken to consider whether:

1. The new tax regime introduced in July 2011 has been successful in attracting more new High Net Worth residents and their investments to the Island.

2. To introduce a mechanism for increasing the minimum tax contribution in line with inflation.

3. To introduce a mechanism for enforcing the minimum tax contribution.

4. Existing 1(1)(k)s can transition to the "normal" tax regime.

5. To permit individuals who were granted their 1(1)(k) housing consents before July 2011 to elect into the new tax regime.

NOTE: this report relates to taxation matters only.

Section 2: Key findings

2.1 Has the new tax regime introduced in July 2011 been successful in attracting more new High Net Worth Individuals (HNWIs) and their investments to the Island?

The new regime appears to be working well. The perception of Jersey being 'closed for business' is changing and Jersey is now attracting younger and more economically active applicants, which was the purpose of the tax policy change. The number of licences granted in 2012 was higher than in any of the last 4 years and many of those years prior.

The initial review shows a positive response to the 2011 regime. Further data will be confirmed over the next two to three years. As this becomes available, the full beneficial impact of the new regime on the economy will become clearer in terms of the full financial and economic benefit.

It is recommended to leave this in place and review after it has been in place for 3 complete tax years as intended.

2.2 Consider a mechanism for increasing the minimum tax contribution in line with inflation

There are a number of options that have been considered:

- Increase the prescribed limits within the Income Tax Regulations on an annual basis or in line with a pre-determined figure.
- Increase the prescribed limits within the Income Tax Regulations on a regular basis.
- Increase the minimum annual contribution for new applicants.
- Charge an annual fee in lieu of income tax or to top up a shortfall in income tax.
- Introduce an annual charge in return for being within the regime.
- Introduce a tax cap which can be increased over time.

There are advantages and disadvantages to all of these options as set out in appendix 1. Given that the regime has only recently been introduced, and the evidence suggests that this is working well, it is recommended that this is reviewed once the current regime has been in place for a few years and then limit such a change to the prescribed limits on minimum contribution rather than change the structure. A fundamental change should only be made if the regime is not effective. To make a fundamental change now would risk the credibility of the regime.

2.3 Consider introducing a mechanism for enforcing the minimum tax contribution

To legally enforce HNWIs to make their minimum tax contribution would involve a legislative change. This could be either to the Income Tax Law – for example by assessing the taxpayer on an amount of notional income if their actual income were insufficient to generate the necessary level of tax liability, or by amending the Housing Law and attaching certain conditions when consents are granted. This might include for example:

- a time limited consent which would allow flexibility on renewal;
- attaching a legal agreement ensuring the annual tax charge is paid subject to financial penalties and requiring the individual to leave their property on default; or
- issuing consents that require some kind of 'bond' to be purchased to ensure there is sufficient annual income to generate the necessary level of tax liability.

A change in the Housing Law cannot be made retrospectively and so these changes would be ineffective for those already in Jersey. New entrants are already subject to much closer scrutiny and those considered to be "on the margins" financially are usually subject to conditional consents, which can be revoked. Therefore the risk of individuals not meeting the minimum tax contribution is reduced, for those arriving in the last few years and, future residents.

In conclusion:

- A change in the tax law is not recommended as the alternatives have other down-side risks.

- It is not considered necessary to change the current application process as the existing process is more robust.

2.4 Should existing HNWIs transition to the "normal" tax regime?

Individuals under the pre 2005 rules are subject to tax at 20% on their taxable income. Furthermore, many who were granted licences from 2005 onwards are effectively subject to tax at 20% on their taxable income as their taxable income does not exceed the 20% band (£1m) or is Jersey source, and so is subject to tax at 20%. Therefore transitioning them to the "normal" tax regime would not generate a different tax liability.

Most individuals who were granted a license prior to 2005 no longer require a housing license to live in Jersey as they have been resident for more than 10 years. To seek to move them to the "normal" regime would have little, or potentially negative, impact on tax revenues.

2.5 Consider permitting HNWIs who were granted their housing consents before July 2011 to elect into the new tax regime

It is recommended to permit HNWIs who came to Jersey before the new rules took effect in July 2011 to transition to the new regime in certain circumstances. This would be in cases where it would be for the economic benefit of the island for them to do so, for example through the introduction of new employment and investment opportunities by relocating to Jersey business or investments that currently sit outside of the island.

The process would be by application and approval would be given on a discretionary basis. A HNWI would only be able to apply to benefit from the 2011 regime in certain circumstances including for example:

- Their tax liability would not decrease as a result of the move.
- They commit to paying the current minimum tax contribution.

- They commit to bring investment, employment and/or other economic benefit to Jersey.
- The economic benefit is identifiable and measureable.

Appendix 2 illustrates the criteria that will be considered when determining whether the application will be approved. Full guidance has been published alongside this report.

Having this law in place would fully support the policy of wanting to attract further economic wealth to Jersey.

2.6 Recommendations

There are three recommendations:

1. Keep the current 'new' regime under review to ensure it is effective in meeting its objective in attracting new entrants.

2. Allow existing taxpayers currently under the pre-2005 or the 2005 HNWI regimes to transition to the 2011 regime.

3. If there is a need to increase contributions further in the future this should be done through increasing the minimum contributions for new entrants or the prescribed rates rather than a fundamental change to the structure, provided the regime is delivering the objective of attracting new entrants.

Section 3: Commitments

In the Budget debate, the Minister committed:

- To review the effectiveness of the new 1(1)(k) policy in encouraging HNWIs to bring their business to Jersey (no commitment has been made to publish the results). *"I want to see the extent to which our new policy which was designed to make sure that 1(1)(k)s had the advantage of bringing their business to Jersey rather than parking it in another jurisdiction before they came here. The idea of the new regime was that they brought all of their business to Jersey."*
- To review the overall policy with the intention of maintaining the value of the minimum tax contribution in real terms – *"I want in time to bring forward a proposal to maintain [the] minimum tax contribution and I will do it before the next Budget"*
- To work with the Chief Minister and to review again the overall policy over the next few months - *"There may be another way that we can guarantee that we can ensure that we get that minimum tax contribution by condition on the housing licence or other ways."*
- To look at a transitional arrangement for moving pre 2005 1(1)(k)s to "the normal 20% rate"
- Will not undermine the competitive position of the regime if this means that overall targets can't be achieved

During the debate on the new tax regime in 2011, the Minister committed:

- To keep under review the target of 15 new 1(1)(k) consents per year for the next three years and then to consider whether it was still appropriate

Section 4: Reviewing the success of the regime introduced in 2011

4.1 Introduction

The Minister has committed to reviewing the success of the new tax regime for HNWIs introduced with effect from 22 July 2011. This regime was designed to encourage more applicants for 1(1)(k) consents, and to encourage those applicants to invest in Jersey.

This review has been undertaken based on the most up-to-date information available at this time. The new tax regime came into effect on 22 July 2011, so has been in force for just over two years. There is frequently a gap between the initial housing consent being issued (the "in principle consent") and the individual acquiring a property in Jersey (either purchased or leased) and becoming resident here. In principle consents are issued on the basis that they last for 6 months, but are routinely extended for a further 6 month period.

Some individuals to whom 1(1)(k) consents are granted decide not to move to Jersey for a number of reasons, such as lack of acceptable property, change in financial circumstances or familial issues.

The number of new residents will lag behind the number of consents granted, and information about the tax paid by those new residents will lag even further, as a full picture of the tax position of a new resident will often not be clear until the tax return has been submitted for the first full calendar year following taking up residence. For example, if a new taxpayer takes up residence in November 2011, only limited information would be available for that year and not until part way through 2012. The first full calendar year of residence, 2012, would be more representative. The tax return for this year would be submitted in 2013. The data relating to 2012 or 2013 was not available at the time of the review. The number of applicants will continue to be monitored to ensure the operation of the regime continues to meet its policy objectives. Determining the full economic value brought to Jersey can take longer to crystallise. Undertakings regarding, for example, disposals of assets may be disrupted by market forces, and moving staff or investments may be time-consuming. As a result, a "snapshot" of the position of an individual a short time after coming to the Island may not give a true picture of the full value and contribution to, or investment in, the Island.

This review has looked for evidence of:

- An increase in the number of applications and new residents.
- The minimum tax contribution being paid.
- Commitments made by new applicants to bring their businesses or investments to Jersey.

Where possible, the review has also attempted to ascertain the following:

- Any conditions applied to the consent are being complied with.
- Any assertions about investing in Jersey have been followed through.

This will continue to be monitored as further data becomes available.

However, some information is available and has been used for the purposes of this review in order to identify the factors indicating the success or otherwise of the new regime. These include:

- Number of new applicants for consent.
- Number of new residents.
- Tax paid by new HNWIs.
- Investment in Jersey by new HNWIs.
- Stamp duty paid by new HNWIs.
- GST paid by new HNWIs.
- ITIS payable by new HNWIs.
- Investment brought to Jersey by new HNWIs.
- Jobs created by new HNWIs.
- Sums spent in the local economy.

The review has also considered Jersey's competitive position with regard to other territories which also have beneficial tax regimes for high net worth individuals, and whether any non-tax changes are required to the regime to make it more competitive or attractive.

4.2 Summary of findings

The new regime has been in place for just two years. Further factual data regarding the financial and economic contribution the new HNWIs have made will become available over the next two to three years.

However, there are strong indications as set out in the following sections that the change has resulted in a greater number of consents, and more economic activity in Jersey, both of which will result in higher tax revenues.

4.3 Effect on numbers of applicants

Applications have been formally made in recent years as follows, most of which have been granted:

Year	Minimum contribution	Tax regime	Applications
2012	125,000	July 2011	14
2011: July regime 2011: 2005 regime	125,000 100,000	July 2011 2005 regime	7 2
2010	100,000	2005 regime	8
2009	100,000	2005 regime	10
2008	100,000	2005 regime	9

It should be noted that a number of informal applications are made that do not progress to formal application for a number of reasons.

It is comparatively unusual for an application to be formally rejected, because in practice unsuitable applicants rarely reach the point of making a formal application for consent, with their advisor or the Director of High Value Residency discouraging many unsuitable enquirers in the early stages. For example, where a potential applicant was known to be involved in a business practice which could bring the Island into disrepute, they might be given an indication early in the process that their application would be unlikely to succeed and this would typically be sufficient to deter most from proceeding. Where a potential applicant clearly did not have sufficient wealth to meet the criteria, they too would be discouraged from applying. Statistics on the numbers of individuals "weeded out" in this way are not maintained as the number is not considered to be useful.

Consents issued

The number of consents issued in the first 18 months of the new tax regime is higher than the number issued in each of the previous 4 years (and many of those years prior). This is a clear indication that the tax policy change has been effective. In addition to the changes to the tax regime, other factors may have influenced the growth in applications including:

- Changing economic circumstances – there was a sharp drop in the number of applications when the economic downturn began, which was in part due to the inability of individuals to sell the assets which they had relied on to generate the income that would have been used to fund the move to Jersey and support an application for 1(1)(k) consent. Although economic conditions have not eased significantly, there has been some easing in the market such that transactions are now going through which were not a few years ago.

- External factors like changes in the tax rules, or uncertainty over the fiscal, regulatory or political regimes in the country in which they are resident might encourage an individual to relocate themselves or their business.

None of these factors is likely to be conclusive in itself, but each could have some bearing on the decision-making processes of individual applicants.

Applications made

One of the aims of changing the tax system was to increase the number of applications for 1(1)(k) consents to 15 per year. The total number of formal applications for 2012, the first full year of operation of the regime, was 14, which indicates that this is on target and, to date, the policy is proving successful. As at the end of August 2013, 5 formal applications were received, all being approved.

Properties purchased

For the reasons explained further below, there is often a delay between the initial granting of the consent and a property actually being purchased. The number of properties purchased in 2012 was lower than the number of consents, but this does not necessarily indicate that those individuals are not relocating.

4.4 Effect on numbers of new HNW residents

The granting of an in principle consent does not guarantee the applicant will take up residence in Jersey. In some cases, this will be because they cannot find suitable accommodation, in others it will be because their financial circumstances have changed (e.g. inability to dispose of an investment, decline in economic conditions making assets less valuable/disposable) or because personal circumstances may change.

As a result, the following sections have considered actual tax and stamp duty received from individuals who have become resident in Jersey since July 2011 (subject to the limitations in available data set out above), as well as the representations made by individuals granted consents in the same period. These representations are made in the course of the application for consent, which will have been submitted to both the Taxes and Population Offices in support of the application for consent.

4.5 Commitments regarding tax contributions – evidence of an increase

It is expected that the new regime will generate more revenue for the Island through the combination of increasing the minimum tax contribution and encouraging more HNWIs to come to Jersey. The evidence available does show an increase in successful applications which will, by default, generate higher revenues.

Very few of the new HNWIs have been in the Island for a complete tax year at this point. More data regarding their direct financial contribution to the economy will be available over the next two to three years, at which point a fuller picture of the financial benefit will be available.

4.6 Commitments regarding bringing investments and employment to Jersey

With the integration of the Director of High Value Residency into the Locate Jersey Team, greater efforts are being made to encourage HNWIs to bring their businesses to Jersey or to invest in Jersey.

More recent applicants have been economically active individuals. The profile of the type of individuals applying under the new regime is changing and the results are in line with the policy of the type of HNWI Jersey wishes to attract in order to obtain, and generate, further economic benefit.

Based on Taxes Office records, a number of the new HNWIs arriving since 2011 committed to bring businesses to the Island, with attendant employment opportunities, including:

- Senior company officers
- Senior finance staff
- Senior advertising staff
- Administration assistants
- Locally recruited trainees

From two of these, it was estimated that 16 jobs would be created from the arrival of these businesses.

4.7 Immediate direct contribution: expenditure in Jersey

New arrivals have invested in property renovation work, bought new cars and boats and spent large sums of money in the local economy. The level of this additional spend is not recorded but, whatever the value, it is a positive contribution to the economy.

The 2011 report prepared by Withers LLP and Panopticon Policy found that the economic effects of the HNWIs were large and estimated their economic impact in 2009 as at a minimum between £50-£70m. They considered this estimate to be conservative and subject to many uncertainties.

4.8 Immediate direct contribution: stamp duty

The purchase of expensive properties by HNW entrants generates substantial Stamp Duty revenue. In 2012 the properties purchased would have generated over £887,000.

Section 5: Increasing the minimum tax contribution

5.1 Reconsidering the options

Withers LLP and Panopticon Policy was commissioned in 2010/11 to review ways of increasing the overall tax contribution of HNWIs to Jersey. They recommended that the minimum tax contribution could be increased within limits without a detrimental effect on the regime and that the tax system should be simplified. Both of these recommendations were put into practice in 2011 with the minimum contribution being increased to £125,000.[1]

The changes put in place in July 2011 did the following:

- Removed the distinction between income arising in Jersey and elsewhere. This was intended to remove the disincentive for HNWIs to bring all of their wealth to Jersey when they moved here, because of the differential in tax rates between, for example, bank interest earned on deposits in the Jersey and Guernsey branches of the same bank.
- Simplification of the tax rates applicable to HNWIs, replacing the old 20%/10%/1% rates with 20% and 1%. This was intended to make the system easier for prospective residents to understand.
- Together with changes made by the Housing Minister, increased the minimum annual tax contribution expected from HNWIs coming to Jersey from £100,000 to £125,000.
- Ensured that Jersey's tax regime was reasonably competitive (though still more expensive) than other locations competing for new HNWIs.
- Allowed the Island to get some tax (albeit limited) from wealthier HNWIs with income of more than £625,000 per year.

This course of action was chosen over the alternative options, particularly the options of introducing either a cap on the maximum tax payable or charging a fee for a 1(1)(k) licence, because they allowed the Island to benefit from "upside" if the individual has a higher income. This would not be possible under either a cap or a fee.

[1] With effect from 1 July 2013, there is also a £5,000 fee for the registration card.

The main options identified in 2011 for increasing the minimum contribution have been revisited with the aim of recommending what change, if any, would be appropriate. These options are:

1. Increase the prescribed limits established in the Income Tax Regulations on an annual basis, in line with some pre-determined measure or figure. This would increase the level of income on which tax at 20% was payable above the current £625,000 (giving £125,000 of tax).
2. Increase the prescribed limit in the Income Tax Regulations on a regular basis, say every five years, benchmarked against competitor jurisdictions to ensure Jersey did not become too uncompetitive.
3. Increase the minimum annual contribution required from new applicants for 1(1)(k) consent, set by the Chief Minister, from the current level of £125,000.
4. Charge an annual fee for 1(1)(k) consent, in lieu of income tax or to top-up a shortfall in tax payable and the minimum contribution, which could be increased automatically each year or periodically on review.
5. Consider a system similar to the UK remittance based regime for non-domiciled individuals, with the option of paying tax under the normal regime or in exchange for a fee.
6. Capping the maximum amount of tax payable by a HNW resident. Although in the short term it would cause a fall in tax revenues if applied to all HNWIs, over time gradual increases in the cap could be used to increase revenues over their reduced level.

These were analysed in full in the 2011 review and are included in the report issued by the Tax Policy Unit in July 2011 and the accompanying report by Withers LLP and Panopticon Policy. Nothing has changed since then to make any of these more or less attractive.

5.2 Barriers for new HNWIs

Whatever the tax regime, there are a number of factors that will deter some people from relocating to Jersey. Withers LLP and Panopticon Policy identified a number of such factors:

- A perception that Jersey is “closed for business”. This means that HNWIs thinking of relocating somewhere, may not be thinking of relocating to Jersey. Withers LLP and Panopticon Policy identified that this issue was common among off-island intermediaries. This perception may have arisen from the time in the late 1990s and early 2000s when the Island’s policy was to restrict the numbers of new Ks. Although the policy has since changed, the perception it created appears to have lingered, although following the introduction of the new regime this seems to be changing. In addition, Locate Jersey are developing a new advertising campaign which will further assist with this.
- Lack of appropriate housing stock.
- Lack of amenities such as berthing facilities for large yachts or hangar space for private aircraft, golf clubs and school places.
- Jersey’s minimum tax contribution is higher than the maximum contribution in many of its competitors.
- Complexity of application process. Jersey is seen as difficult to move to and the process of getting a consent is difficult and time-consuming.
- Concerns about confidentiality/anonymity. A perception that by requiring police and background checks, and full disclosure of worldwide assets and sources of income, Jersey requires more detailed, comprehensive information than do other places which seek to attract HNWIs.
- Lack of certainty in the application process. The fact that the application is at the discretion of the Chief Minister may deter new applicants, because having provided all their information they cannot be certain that the application will be accepted.
- Lack of available information. Withers considered that the information publicly available about Jersey’s tax and housing regime for HNWIs was difficult to find, and that negative stories came higher up the list of internet searches than positive and/or informative sites. A refocus on the marketing and application process has sought to address a number of these issues.

5.3 Principles underlying the HNWI tax regime

Withers LLP and Panopticon Policy suggested that the following principles should inform the design of the HNWI tax system:

- Certainty
- Predictability
- Stability. The system should not seek to retrospectively change the treatment applied to Ks beyond that which had been agreed in the past. Withers LLP and Panopticon Policy considered that it was important that Jersey's regime be seen as stable internationally.
- Competitiveness. Jersey is already quite expensive in terms of tax, so care should be taken not to become completely out of step with competitor jurisdictions.
- Simplicity. This is considered important because tax regimes that require people to put structures in place to manage their liabilities are considered undesirable – they create additional cost, direct control of assets is lost, and they are more complex to administer on an on-going basis.

These principles do not mean that there is no room for flexibility in the system. However, changes should be made with caution after a thorough review.

The tax regime was designed to encourage wealthy people to come to Jersey and to benefit the wider community by their presence here. The system was also intended to control the numbers who come to the Island, at a time when population controls were being introduced across the board. Since then the regime has been used as much as a social policy as a revenue raising method. This is reflected in fluctuations in the minimum tax contribution expected over the years. This has been raised at times in order to limit the number of new applicants (occasionally so high that almost all potential applicants were deterred) and lowered at others when the numbers applying seemed to be less than desirable.

Currently, the policy is to encourage more HNWIs to the Island, with the intention of increasing inward investment. This policy is also reflected in the change of profile of HNWIs, who are increasingly younger and more economically active than the typical applicant in the past.

5.4 Conclusion

The introduction of the new regime in 2011 combined with the refocus on marketing has resulted in an increase in the number of consents granted. This, combined with the fact that more applicants are relocating their wealth and business to Jersey, will result in an increase in tax revenues, Based on advice from Withers LLP and Panopticon Policy, it is not recommended that any further change is made.

Section 6: Enforcing the minimum tax contribution

A long-recognised difficulty with any direct tax regime is that the tax system is inherently limited when it comes to extracting revenue. A taxpayer can only be taxed on his taxable income. If his income falls below the expected level, it is not possible to collect any more tax than is due under the Income Tax Law.

In many cases it is not possible to ensure that individuals granted a 1(1)(k) consent continue to pay the minimum tax contribution expected from them. The financial condition on which HNWIs are granted consent is based on projected, estimated income. This cannot usually be guaranteed. There is some concern that this may lead to lower than expected tax revenues from the regime. A HNW resident may pay less tax than originally expected for a number of reasons including a genuine drop in income, whether due to fall in returns on assets or diminution of assets due to divorce or another cause. This is a risk of ‘doing business’ which can be minimised or managed through appropriate due diligence procedures.

Recent changes to the application and due diligence procedures, combined with the use of conditional consents, has reduced the risk that individuals will not meet their expected contributions.

The only way to be certain of collecting the expected minimum contribution is by way of an agreed annual fee. This would however mean that there was no opportunity to gain an upside from more wealthy residents, which is only possible through either charging the fee based on wealth or by taxing income earned. Therefore if a HNWI’s income were to increase significantly, for example, because of an upturn in their investment income, the States would not be able collect any tax revenue on that additional income. Therefore this approach could actually be perceived as a ‘capped’ contribution.

A fee could be index-linked or periodically reviewed. It could also be used in conjunction with the tax regime as a top-up mechanism should tax liabilities fall below a certain level.

The main issue with a fee based regime with the current Housing Law is that a fee cannot be extended to apply for more than 10 years after the individual takes up residence in Jersey, as after that date they would have acquired full residential qualifications in their own right and would no longer have need of the 1(1)(k) consent to live or work in Jersey. The revenue raising ability of a fee is therefore limited without a substantial change to the Housing Law, which in itself could be detrimental to the regime.

An alternative solution may be to change the treatment applied under Control of Housing and Work Law Housing law.

The Law permit conditions to be attached to a person's residential status . These can include financial conditions.

Options could include:

1. Issuing time-limited permissions for a period of 3 or 5 years, on the basis that they would be renewed automatically provided the individual had paid an average of the minimum tax contribution over the period, or annually.

This could be applied automatically to all permissions, or as now, just to those who are considered by the Population Office to be "marginal" or at risk of not meeting their minimum contribution. Applying such a condition to all permissions will not be attractive to those wishing to relocate and who want certainty over their future obligations which is particularly important to those who are relocating business activity. Such a change will act as a deterrent to some.

2. Issuing consents subject to a legal agreement that the minimum tax contribution would be met, either annually or on average over a period of say 3 or 5 years. Permissions would be revoked if the individual did not pay the minimum tax, requiring the individual to leave the property. Potentially, financial penalties could be invoked.

This is similar to the suggestion above, but has the advantage of providing certainty to the HNWI regarding their treatment, and potentially, to permit a system of penalties before the revocation of the housing consent. Because revoking the consent is rightly seen as being an extreme action, many HNWIs and their advisers consider that it is highly unlikely to be invoked. It may not therefore be the most efficient deterrent in the way that a clearly delineated system of penalties could be.

3. Issuing permissions subject to the requirement for a pledged account / marketable securities / bond secured against the property with a collateral value of £1.25million being 10 years' worth of the minimum tax contribution, to be collected on the difference between the individual's tax liability and £125,000 on average over a set period of years, or annually. However this does not guarantee that this level of tax would continue to be paid past the 10 year timeframe once the individual was fully qualified. That said, this is an inherent risk of the current regime. This will be seen by some as implying a lack of trust. Many HNWIs might be offended by such an approach, particularly since it is so different to many other jurisdictions. This is therefore likely to be seen as unattractive.

To date, Jersey has shied away from being seen to "sell" permissions to high net worth individuals, and there is a strong risk that this would appear as such. There is also a risk that by permitting HNWIs to "buy" their permission, we might be attracting people who would not have the level of income which we expect from current HNW residents. An individual would not necessarily have to be as wealthy as is currently expected to be able to afford a bond of £1.25million.

In conclusion, unless a fee based structure is introduced which has its own limitations, it is not possible to be certain that the minimum contribution will always be paid. This however is considered to be an element of the system that is far better managed now. While the risk remains, and it is a risk inherent in any regime that taxes income, it is not recommended that any charge is made to the tax system to address this issue.

Given that none of these solutions would address the concern which primarily relates to those who moved to Jersey many years ago and are now fully qualified, and given the very recent change in the tax regime combined with more robust due diligence procedures introduced over the last few years, it is not considered necessary to may any further changes at this stage.

Section 7: Transitioning existing 1(1)(k)s to a "normal" 20% regime

The legal position is that housing consents were issued only when an individual acquired a new property, whether by purchase or lease. The consent therefore related to a specific housing transaction, and provided a resident has not moved house since their original 1(1)(k) consent was granted, they continue to be considered a 1(1)(k) for tax and housing purposes.

There was no mechanism in the Housing Law or the Income Tax Law that would permit an individual being no longer considered to be a 1(1)(k) for tax purposes other than to revoke the consent under the Housing Law. Under the new Control of Housing and Work Law, there is no further power to withdraw permission from an individual unless they have not complied with any conditions attached to their permission.

For this reason, it is not considered possible to "transition" residents who have been in the Island for more than 10 years out of the regime under the current Income Tax or Housing Law. They are automatically in for tax purposes unless and until they change their residence status, either by choice or by transaction.

In addition, pre-2005 1(1)(k)s pay tax at 20% on their income and therefore there is no special tax regime from which they can "transition". The Income Tax Law says that both the 2005 – 2011 and the 2011 and onwards regimes apply to individuals who occupy their property by virtue of a 1(1)(k) housing consent. Therefore they would need to move house under another category to be re-categorised.

Furthermore, from a tax revenue perspective, moving them to this regime would have little, or a potentially negative, impact. Therefore such a measure would not be effective.

Section 8: Transitioning old 1(1)(k)s to new regime

Representations have been made from tax advisers seeking to permit their clients to be taxed under the new, post-July 2011 regime with the main objective of simplifying their affairs by bringing more of their businesses and the management of their wealth to Jersey. As noted previously in the report, the tax regime in place prior to July 2011 actively encouraged the holding and management of wealth outside Jersey which does not support the growth of inward investment.

1(1)(k) consents are (now) granted at the discretion of the Chief Minister (formerly the Housing Minister), and are granted on the basis that the applicant will bring an economic benefit to the Island. In principle, existing HNW residents could be permitted to opt into the new regime subject to conditions imposed, such as:

- increased tax liabilities under the new regime;
- a commitment to paying the newer, higher, minimum tax contribution; and
- there being an identifiable benefit to Jersey such as bringing the management of their investments onshore.

Appendix 2 illustrates the criteria that will be considered when determining whether an application will be approved.

A change to the Income Tax Law would be required in order to permit individuals who were granted a consent before July 2011 to be taxed under the new regime.

There are a number of benefits to allowing existing HNWIs to elect into the new regime, including:

- It should result in the collection of more tax from existing HNW residents by requiring them to commit to paying the new, higher annual minimum contribution level of £125,000 before permitting them to opt into the new regime.

* New employment and investment opportunities could be created if the election required the taxpayer to bring businesses or investments to Jersey that currently sit outside the Island.

Since the tax treatment would be elective and discretionary, and would be subject to clear and positive financial conditions, it is difficult to see the downside to Jersey. A breach of these conditions would result in the tax treatment of the HNWI reverting back to its original position. To minimise any down risk, consideration should be given to permitting the revocation of the election by the Minister if conditions are not met.

The Law Officers' Department has advised that it would be permissible to introduce an elective and discretionary tax system. It is recommended that this change will be taken forward as part of the 2014 Budget measures. It is likely that this will require amendment to the Income Tax (Jersey) Law 1961 and potentially the Income Tax (Prescribed Limits and Rates) (Jersey) Regulations 2004.

Appendix 1: The current tax regimes for HNWIs

There are currently three tax regimes in operation for HNW residents, which depend on the date on which the 1(1)(k) consent was granted.

- **Before 2005.** An individual who was granted consent to live in Jersey under Regulation 1(1)(k) before 2005 is taxed in accordance with normal income tax principles, i.e. at the standard rate of income tax on all of their taxable income, wherever in the world it arises. In practice, these individuals may have put structures in place before they came to Jersey to manage the amount of income they derive and thereby their tax liabilities. The minimum tax contribution agreed by these individuals will depend on when they came to the Island, with low minimums applying to those who came in the 1970s and early 80s, rising as high as £200,000 for those who came in the early 2000s. The minimum contribution varied over the years, and was used as either a brake or accelerator on the number of applicants. However, the impact of the increase to £200,000 in the early 2000s was to effectively shut off new applications and the effects are still visible today. Withers LLP and Panopticon Policy in 2011 were still reporting that some UK intermediaries believed that Jersey was closed to new high net worth applicants.

During the period from 1993 to 2000, the minimum tax contribution of some entrants was index linked and so increase each year. However over time this resulted in tax liabilities exceeding income, highlighting the difficulty of such a regime.

- **1 January 2005 – 21 July 2011**. Individuals granted housing consents in this period and who continue to occupy their property under a 1(1)(k) consent are taxed in accordance with Article 135A(1) of the Income Tax (Jersey) Law at the following rates:
  - The standard rate of income tax on all income arising in Jersey
  - 20% on the first £1 million of income arising outside Jersey
  - 10% on the next £500,000 of income arising outside Jersey
  - 1% on all other income

This regime would also apply to any individual granted their consent before 2005 who applied for a new consent, for example, if they move house, between 1 January 2005 and 21 July 2011.

- **22 July 2011 onwards.** Following a change to the tax rules relating to HNWIs on 22 July 2011, an individual who is first granted their 1(1)(k) consent from that date onwards is taxed under Article 135A(3A) of the Income Tax Law at the following rates:
  - 20% on all income earned from land and buildings in Jersey, or dividends paid from a company in receipt of Jersey property income
  - 20% on the first £625,000 of all other income
  - 1% on all income above that level

At present, HNW residents may switch from the pre-2005 regime to the January 2005 – July 2011 regime if they apply for a new housing consent, but there is no opportunity for those whose consents were granted before 22 July 2011 to be taxed under the regime that came into force on that date.

Appendix 2: Guidance on permitting HNWIs who were granted their housing consents before July 2011 to elect into the new tax regime

A HNWI who already holds a housing consent and wishes to be subject to the tax treatment as introduced in July 2011, will be required to meet certain criteria.

In addition to committing to paying the annual tax contribution of £125,000, they will also be required to demonstrate an identifiable and measurable economic benefit to Jersey.

The specific type of economic benefit will depend on the financial and business affairs of individual involved.

Criteria that will be considered including:

- The creation of employment opportunities.
- The use of local professional advisors.
- The investment of funds locally.
- The management of their wealth or business activities from Jersey.
- The relocation of a business to Jersey.

It is difficult to be prescriptive as the circumstances of each person will be different. The economic benefit of the whole package will be considered.

When reviewing the above, consideration will be given to the strategic aim 3 of the Economic Growth and Diversification Strategy, (June 2012) which focuses on creating new business and employment on high value sectors. Further detail on this is expected in the 2013 Enterprise Strategy which is due to be published shortly. This will ensure the alignment of policy regarding inward investment.