STATES OF JERSEY

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FISCAL STRATEGY (P.44/2005): SECOND AMENDMENT (P.44/2005 AMD.(2))– COMMENTS

Presented to the States on 10th May 2005
by the Finance and Economics Committee

STATES GREFFE

COMMENTS

Introduction

This amendment seeks to tax Jersey resident shareholders on the proportion of profits attributable to them from both public and private companies, as well as unit trusts, investment trusts and investment funds, rather than, as now, paying tax on the dividends they receive.

The background to this amendment is that in order to recoup the tax revenues which would be lost by the move to a general corporate tax rate of 0%, the Finance and Economics Committee has proposed the implementation of ‘look through’ arrangements whereby Jersey resident shareholders are taxed on the share of company profits attributable to them. Senator Syvret’s report acknowledges that the Finance and Economics Committee’s ‘look through’ proposals will prevent private companies being used as tax avoidance mechanisms. The Finance and Economics Committee, however, has proposed a *de minimis* shareholding for the ‘look through’ arrangements for public companies of between 2% and 5%. If a Jersey shareholder owns less than (say) 2% of the shares in a Jersey or U.K. publicly quoted company, the Finance and Economics Committee proposes that the shareholder should continue to be taxed on the dividends received rather than the proportion of the companies’ profits attributable to them. The Finance and Economics Committee has proposed this *de minimis* level of ownership of public companies simply for practical reasons in that the administration involved for both the taxpayer and the tax office of calculating the share of profits attributable to them from small shareholdings in international companies such as BT would be prohibitive.

This amendment, however, removes the principle of a *de minimis* level of shareholding in public companies, and by doing so is proposing a policy that would, in practice, be impossible and unmanageable to implement.

The Finance and Economics Committee’s views:

The Finance and Economics Committee cannot support the amendment proposed to P.44/2005 for the following reasons –

An individual with a *de minimis* shareholding in publicly quoted companies will not be avoiding or evading Jersey income tax. He will continue to be assessed to Jersey tax, as now, on the dividends received.

Imputing the profits of such a publicly listed company to a small shareholder would be both an absurdity and bad law, as the individual in question would have –

(a) no control over the company;
(b) no control over its management;
(c) no control over its dividend policy; and
(d) no right to participate in its profits except to the extent that he receives dividends from the company by virtue of his shareholding in the company.

A *de minimis* limit has to be chosen for these reasons. It is a matter for the States Assembly to decide what that *de minimis* limit should be because, as a matter of practical expediency, such small shareholders have to be exempted from having the profits of publicly listed companies imputed to them.

It would place an impossible obligation on an individual if he had to make a true, correct and complete return of imputed profits related to his portfolio of a few hundred, or even several thousand, shares in a number of publicly quoted U.K. companies. That individual would have no power in law or in practice to insist that the publicly quoted company in question give him access to the audit and tax papers and files he would need to make an imputed profits return based on his shareholding. These are papers and files which he would certainly need to make a true, complete and correct return to the Comptroller to comply with Jersey income tax law, principles and practice and he would never be able to access them. For those with an investment portfolio with holdings in dozens of publicly quoted companies, which is a very common occurrence, they would be faced with an enormous administrative and compliance burden. In addition, their shareholdings in such companies can vary on a daily or weekly basis and it is likely to be impossible to ascertain the percentage of profits that should be apportioned to a Jersey resident individual in such varying circumstances.

Another reason for having a *de minimis* limit for publicly quoted companies is to ease the administrative and compliance burden on the Comptroller of Income Tax so that he does not have to make assessments of imputed profits on Jersey residents who have very small shareholdings in publicly listed companies and to excuse him from an obligation to ensure that all Jersey taxpayers have complied with such a provision of the Income Tax Law. Such a limit is also essential to ease the compliance burden placed on professionals who would have to prepare the imputed profits computations for their clients. Without such a *de minimis* limit, the administrative and compliance burden placed on both the Income Tax Office and the taxpayer would be very significant indeed.

A *de minimis* limit is standard practice in the United Kingdom. For example, Section 13 of the United Kingdom Taxation of Chargeable Gains Act 1992 provides that in the case of any participator in a company to which the gain accrued where the aggregate amount falling to be apportioned to him and to persons connected with him does not exceed a *de minimis* of 5%, there will be no apportionment of the chargeable gain. That 5% has been subsequently increased to 10% to ease the administrative burden involved.

The same reasons for having a *de minimis* limit for holdings in publicly quoted companies apply equally to *de minimis* holdings in publicly quoted unit trusts, investment trusts and investment funds. The fact is that individuals with *de minimis* holdings in such vehicles do not have control over those vehicles, do not have control over the management of these vehicles and do not have control over the dividend distribution policy of these vehicles.

For the above reasons it is clear that such small shareholders should be exempted from having the profits of publicly listed companies imputed to them, and establishing a *de minimis* limit achieves this exemption in practice.

As for taxpayers investing in capital gains roll up funds, that possibility already exists, and the Comptroller of Income Tax rules on very many such transactions every year. He has invoked, and will continue to invoke, the long-standing general anti-avoidance provision contained in the Income Tax (Jersey) Law 1961, Article 134A, to counteract any such transactions if he is of the opinion that the transaction has as its main purpose, or one of its main purposes, the avoidance or reduction of the liability of any person to Jersey tax through the conversion of an existing taxable income stream into a capital gain. If the Senator believes the Comptroller should have even more powers to ensure that he is able to rule on all such transactions, by an amendment to the aforementioned Article to make it mandatory that Jersey residents ask for pre-clearance for all such transactions, the Finance and Economics Committee would certainly consider such a move.

Summary

In summary, for the reasons already stated, such as unfairness, impracticability, and the enormous administrative and compliance burden that would be imposed on both on the taxpayer and the Income Tax Office, the Committee cannot support this amendment.