STATES OF JERSEY

CORPORATE SERVICES SCRUTINY PANEL: DEEMED RENT (P.161/2008) (S.R.2/2009) – RESPONSE OF THE MINISTER FOR TREASURY AND RESOURCES

Presented to the States on 13th July 2009
by the Minister for Treasury and Resources

STATES GREFFE

REVIEW OF DEEMED RENTAL BY THE CORPORATE SERVICE SCRUTINY PANEL – RESPONSE FROM THE MINISTER FOR TREASURY AND RESOURCES

The Minister would like to apologise for the length of time it has taken to respond to the Panel's report and is grateful to the Panel for all the work that has been undertaken on the deemed rental proposals.

Findings

2.3.1 Proposal increases administrative burden on some companies

This is accepted. The companies affected will have to obtain valuations on a three yearly basis and submit these to the Comptroller of Income Tax, along with trading accounts, although that is balanced by the fact that they will no longer pay tax at 20% on these trading profits

2.3.2 The Department appears not to have a robust record of the companies to apply the 'Deemed Rent'

This is also accepted. There are no requirements for the companies that will be affected by the 'Deemed Rent' to currently make a formal return of the properties they own in Jersey to the Department. However, preliminary indications of the properties owned by these companies was obtained through some research undertaken at St. Helier Town Hall.

2.3.3 Parish rates are unsuitable to obtain ownership information

It is agreed that the Parish Rates records are out of date insofar as obtaining current and up to date records of rental market value are concerned. They also appear to be unreliable in determining what properties are actually owned in Jersey by these non finance non Jersey owned companies.

2.5.4 There have been insufficiently robust investigations to establish yield

This is an unjust criticism as there are no reliable records available to the Department to establish yield. Indeed, the Department has no legal means to obtain evidence as to which of the companies that may be affected owns what properties in Jersey.

2.5.5 Without a robust estimate of the likely yield, we do not know how far the legislation goes to satisfy equity objectives between local and foreign companies. The legislation will also create new inequities between foreign companies themselves but without evidence as to what proportion own their own premises we do not know how widespread these inequities will be

This is accepted.

2.6.6 The difficulty in obtaining an offset against UK tax could be a significant disincentive to trading in Jersey. The Treasury has not obtained evidence of how many companies would have to reorganise their groups to obtain an offset, or what the cost of doing so would be

This is accepted as there are no means available to the Department to obtain this evidence.

2.6.7 Anti-avoidance measures are contained within the draft Law but several commentators still believe that it is possible to avoid the tax

Whilst there are strong anti-avoidance provisions in the Law it is the considered opinion of the Comptroller of Income Tax that professionals and others will challenge him and that there is likely to be considerable administrative and compliance burdens on the Income Tax office in arguing and attempting to rebuff these challenges.

On balance, it is likely that the overall cost of compliance will be considerable and may outweigh the additional tax collected.

2.6.8 Evasion of tax is a criminal activity dealt with by the Income Tax (Jersey) Law

This is correct. Tax evasion now carries a maximum prison sentence of 15 years.

2.7.9 The level of activity inspired by 115(g) is unknown

This is accepted. The Comptroller made enquiries from various professionals in Jersey to try and ascertain which United Kingdom superannuation funds owned property in Jersey and the extent of their income from such property. However, there is little, indeed it is fair to say, no evidence, of the level of activity as, being tax exempt, there is no need for such entities to make any Tax Returns.

2.7.10 The consequences of the repeal are unquantified

The economic advice received is that – there is little economic justification for such a relief as it only serves to distort the commercial property market. Whilst the impact of its withdrawal in the short-term is difficult to determine given the lack of evidence on the scale of these funds involvement in Jersey, in the long-term withdrawal should be consistent with the Island’s economic objectives of economic growth with low inflation. Commercial property values and rents impact on our competitiveness and are perceived by many to be too high in the Island and offering such tax relief does not help. In addition, it can be stated with a fair degree of certainty that tax revenues will increase if this exemption is removed, as even if the property are sold to other investors, rental streams arising will be liable to tax at 20%.

2.7.11 The evidence for repealing 115(g) is not sufficient

As noted above, there is little or no concrete evidence available on which to make a considered decision. Nevertheless, as also noted above, tax revenues are virtually certain to increase if this Article is repealed. That alone might be sufficient justification for its removal. In addition, there seems no rational reason why Jersey should be granting tax breaks for non Jersey residents, which is what the current

115(g) allows, i.e., for United Kingdom residents who have funds invested in the United Kingdom superannuation funds who benefit from this Article.

2.7.12 In the light of the paucity of evidence produced by the Treasury Department, the Panel can neither support nor condemn the repeal of 115(g).

This is noted. It should also be noted that the reason for the paucity of evidence is as detailed above, i.e., no such evidence is available nor can such evidence be demanded under the Income Tax (Jersey) Law.

2.8.13 There are manpower and cost implications to this proposal

This is accepted.

2.9.14 There is no Ministerial confidence in this proposition

It is accepted that there are concerns about this proposition.

I thank the Panel for their work on the Deemed Rent proposal and will consider their Report very carefully indeed and keep them up to date on my thinking on this matter as it evolves over the next few months.