Treasury and Resources Department

Summary of Responses

GREEN PAPER ON DEEMED RENTAL CHARGE

16th September, 2008

SUMMARY OF CONSULTATION DETAILS

The Department of Treasury and Resources published a Green Paper on a Deemed Rental Charge between 23rd July, 2008 and 12th September, 2008.

The consultation was designed to obtain views on the proposal of the Minister for Treasury and Resources to introduce a deemed rental charge on non finance non Jersey owned companies so as to ensure that these 0% rate companies contribute to Jersey tax revenues under the new zero / ten corporate tax structure.

OVERVIEW OF CONSULTATION RESPONSES

There were 17 responses to the consultation exercise. In general, there was a fairly even split between those in favour and those against. Those in favour suggested that the proposal will raise considerable sums of tax, introduce equity and result in fairness and that it was right and proper, indeed essential, that measures were implemented to ensure the companies in question made a reasonable alternative local tax contribution in respect of their Jersey business. Those against the proposal stated that the proposals were complicated, would lead to unfair taxation which might destabilise or do real damage to the property market and drive mainland business away from the Island, as well as acting as a disincentive to trade on the Island which would make Jersey the ultimate loser.

MINISTER / DEPARTMENT'S RESPONSE TO CONSULTATION

The Minister is grateful for all those who have taken the trouble to respond to the consultation. He will now consider all these responses carefully before making a decision as to the way forward.

SUMMARY OF RESPONSES

Respondent's comment	Departmental response
Principles	
It will raise considerable sums of tax and introduces equity.	This is the primary intent of the proposal.
The proposals are complicated and would lead to unfair taxation	This is not accepted. Under the new zero/ten provisions, non finance companies which were paying tax at 20% will now pay tax at 0%. This proposal addresses that perceived inequity. The draft Law will also try to ensure that the provisions, whilst robust, are not unduly complicated.
It will result in fairness and simplicity, at no cost to Jersey taxpayers and at no cost to the Jersey economy	Broadly, this is accepted This could be economically detrimental, if it caused businesses to leave the Island, thereby lessening competitive pressure.
It will create a two tier economy with one sector, finance, being protected and given significant benefits over other industries	This is not accepted. Indeed, under the zero/ten proposals finance entities will be charged at the higher rate of 10%, not 0% like all non finance companies.
It will have devastating consequences on local businesses	The draft Law will have provisions, such as relief from the charge when a trading loss is made, to ensure that this does not occur.
It is unfair that non finance non Jersey owned companies should pay no tax in Jersey and that it is essential that measures be implemented to ensure that they make a reasonable alternative local tax contribution	This is accepted and the primary intent of the proposal is to address this matter.
It is right and proper that foreign businesses should make an appropriate contribution to the running costs of Jersey	This is accepted.
It is unfair and unreasonable if the normal and reasonable costs of running the company, such as borrowing costs, are	This matter will be addressed in the draft Law that will be published shortly.

not allowable for tax purposes	
A very equitable approach to those companies not having to pay tax in Jersey but benefiting from trading in Jersey	This is accepted.
Non resident owned companies are being singled out and it is unfair as they will be charged on an arbitrary figure which, because of the small amount of profit being made, will make the company insolvent in a short period of time and they will simply cease to trade in Jersey	It is not accepted that non resident companies are singled out. Indeed, their tax rate will fall from the current 20% down to 0% under the new zero/ten corporate tax provisions. This proposal addresses the unfairness others see in such companies making no tax contribution under these new provisions.
The proposal appears to have many flaws, for many technical reasons, including the fact that Schedule A, a similar tax to the proposal, was abandoned many years ago	The draft Law will be robust and ensure, as far as is possible, equity and simplicity.
The risk of doing real damage to the Jersey property investment market cannot be worth the introduction of this proposal	This is not accepted. The proposal addresses issues of equity and there is no rational reason why this particular tax exemption should exist any longer. It remains to be seen whether any real damage is caused to the property market, but the general economic view is that it should not do so.
It is only fair that non Jersey companies operating in Jersey should, from their profits, contribute to States revenue	This is accepted and is the primary intent of the proposal.
The deemed rental proposals are complex, inflationary, easily avoided and administratively intensive, although support is given for the abolition of Article 115(g)	The draft Law will ensure, as far as is possible, that the proposals will be reasonably straightforward, robust, equitable and tackle any attempts at avoidance.

A 20% charge would create a heavy and unfair burden on the trader as it pays no regard to the other operating income or expenses of the business	The draft Law will address the issue of certain expenses being allowable against the deemed rental charge. It is accepted that a simple measure such as this bears no direct relationship to profits generated.
This is a very poor substitute for a tax on company profits, as to tax businesses based on rateable value that are not able to generate a profit seems inequitable	It is acknowledged that this is not a perfect solution but it is the best available now that all such companies now have to be liable at the standard rate of zero on their actual profits.
No fundamental objection to the concept of the deemed rental charge. In respect of Article 115 the view of this working party is that any perceived advantage created by the abolition of the current tax exemption in terms of additions to the tax base will be more than outweighed by the negative side effects	The first point is noted but the second is not accepted, as there seems no rational reason why this particular tax exemption should exist any longer.
We continue to express reservations about the introduction of a deemed rental tax charge. The suggested proposal is an arbitrary approach which will result in the inequitable position of two businesses occupying the same equivalent space, one being highly profitable and the other being marginally profitable, yet paying the same fee. In most instances it can be avoided with simple tax planning and is there highly unlikely to raise the desired revenues. We are in favour of the abolition of this	The draft Law will ensure, as far as is possible, that the proposals will be reasonably straightforward, robust, equitable and tackle any attempts at avoidance. There may be some cases where different profit levels occur, but in general rental charges tend to relate to the ability of the business to generate a commensurate profit for that location.

exemption as currently rental payments on commercial property are tax deductible in Jersey but there is no corresponding tax on the income if held by a superannuation fund.	