

STATES OF JERSEY
CORPORATE SERVICES SCRUTINY PANEL
ZERO/TEN DESIGN SUB PANEL

Second Hearing on Zero/Ten Design Proposals
Friday, 21st July 2006

Present: Senator J.L. Perchard (Chairman)
Senator B.E. Shenton
Deputy P.J.D. Ryan
Deputy G.P. Southern
Mr. B. Curtis
Mr. R. Teather

Witnesses: Senator F.H. Walker (Chief Minister)
Mr. J. Harris (Director International Finance, Chief Minister's Department)

In attendance: Mr. M. Haden, Scrutiny Officer

Senator J.L. Perchard:

Well, good afternoon, Chief Minister, John Harris, and welcome to the Zero/Ten Sub Panel. I would like to thank you first of all for -- I know it has been quite difficult to arrange a time that is compatible for both you and the panel hearings, and for you being flexible enough to come through your lunchtime. Can I introduce Brian Curtis, who is an advisor for the Zero/Ten Sub Panel and Richard Teather? I think you know Ben Shenton, Deputy Southern, Mike Haden, Patrick Ryan and myself. There are 2 areas we feel, Chief Minister, that we wanted to discuss with you, particularly in relation to your office as the Chief Minister's Department.

Senator F.H. Walker:

Sorry, you all know John Harris?

Senator J.L. Perchard:

Yes. The 2 areas, Chief Minister, are human rights compliance with regards to the Zero/Ten Design Proposal and the EU (European Union) Code of Conduct compliance; and we needed for our review the official line on that. So, if I kick off with human rights compliance and the information that you would have received when drafting the Zero/Ten document. We have had a submission from a gentleman, and I will read the relevant paragraphs, he puts it quite well, which, as a result of this, there will be a

question: “Disclosures required by individuals to the Comptroller of Income Tax should not go beyond information directly relevant to their actual tax liability for the year in question. The enhanced disclosure proposals go considerably beyond this and seem to amount to fishing in the wildest sense at a level which should normally be triggered only if there were valid grounds for a full inquiry into a taxpayer’s affairs. For the ordinary taxpayer, as well as being unduly onerous, these proposals would appear to breach his entitlement to privacy in respect of his affairs, quite possibly to an extent which would breach his human rights protection.” Do you accept that as a valid comment?

Senator F.H. Walker:

No. Well, I mean clearly it is a comment that someone feels is valid. I have to say from my own personal perspective that has not arisen as an issue; just has not arisen as an issue. Now, John is very much more involved, of course, in the detail of this and all the discussions that we have had.

Mr. J. Harris:

First of all, I thought today was about compliance with the EU code, and maybe there is an error of transmission somewhere that you wanted to talk about human rights compliance for Zero/Ten, and we came prepared to talk about the EU code.

Senator J.L. Perchard:

We will be moving on to that, sure. You were not informed that we wanted to -- while we are seeking clarification from the Attorney General, basically, I suspect, the question I want to ask you - and there is another area regarding human rights and minority shareholders in a minute - what information have you sought regarding human rights compliance when drafting the code?

Mr. J. Harris:

Not a great deal. Basically, the situation at the moment is that the design proposal is just that; is a proposal, and part of the consultation mechanism is to investigate all the angles, including advice from the AG (Attorney General) on human rights compliance. There have been discussions about both general human rights compliance and the issue you raised about minority shareholders, and I have say that the focus thus far has been on the minority shareholder issue rather than the wider human rights compliance issue where, frankly, we are probably in the same position as you in waiting for the AG to reply. So, I do not know if you want to move to the minority interest issue?

Senator J.L. Perchard:

I am quite happy to do that. There is another area regarding human rights, as Mr. Hobbs, one of our people who have submitted to the panel has highlighted. Yes, the other area regarding human rights is basically the deemed distribution charge and the issue regarding minority shareholders and their rights. Have you sought an opinion on that?

Mr. J. Harris:

Well, again, same answer; we will be seeking an opinion from the AG, but we are aware of the issue that arises in respect of minority interests of shareholder, because to compel a company to make a distribution from a minority shareholder position is obviously a difficult situation. We are looking at what is happening in other jurisdictions where they are trying to find a way around that potential, and I underline potential problem, whereby there would be a mechanism forcing the company itself to actually act as an agent for a shareholder in a forced distribution situation. There are difficulties with that that we think apply, particularly in the second area of which you want to talk to us about today, which is EU code compliance. There is a jurisdiction, the Isle of Man, which is going forward on that basis, and the chronology of this is helpful because the chronology is the Isle of Man will go to the EU code towards the end of this year; and to the extent that is an issue debated, discussed and agreed with them, we will then have a precedent that we can align ourselves with. So, at this stage, there is a general advice issue from the AG, and I think he has not yet fully opined on the point, but there is also the practical question of what other jurisdictions are doing and whether or not they are allowed to do something which in terms of the mechanism would solve the problem. We are waiting to see what happens there, which is -- our chronology is helpful in that respect because we are at the end of the process and we can see what others are doing.

Senator J.L. Perchard:

Are you aware as to the situation with the Isle of Man with regards to where in the chain they are?

Mr. J. Harris:

Yes, we are.

Senator J.L. Perchard:

Have you heard anything in the last week?

Mr. J. Harris:

In terms of the chronology of going through the UK?

Senator J.L. Perchard:

Via UK to Europe.

Mr. J. Harris:

What we heard in the last week is that the bill that they have; the Income Tax Bill that they put together, has received royal assent. Now, there are provisions that they have for debate with the code group, which are in the primary legislation for which they have just received royal assent, but there are other provisions which are in their regulations underlying that bill which may become a subject of discussion. If in due course there is a difficulty for them they may be able to deal with that through changing their

regulations rather than having to change their primary law, and that is something we have focused on indeed in the last 10 days.

Senator J.L. Perchard:

Just before you do Patrick, the Isle of Man proposes that the companies will act as an agent?

Mr. J. Harris:

That is right.

Senator J.L. Perchard:

That has received royal assent in the last week?

Mr. J. Harris:

That is right. So, the point then becomes if there is a difficulty do they change their law, or are they asked to change their law which they recently enacted?

Deputy P.J.D. Ryan:

Yes, this is for the Chief Minister.

Senator F.H. Walker:

Of course I must echo what John said, I came here on the clear understanding we were going to be talking about where we sit with the EU in terms of compliance, not human rights and I'm not up to speed on the human rights.

Deputy P.J.D. Ryan:

No, this is not human rights. Yes, but this is specifically --

Senator F.H. Walker:

Except, can I just say, that very clearly no one is going to come forward at the end of the day with a firm proposition which is not human rights compliant, and we are quite clear on that. There is no question of us doing that.

Senator J.L. Perchard:

Well, we really do need to act as a critical friend here and work together, and if there are issues that we have, for example, an issue here that perhaps you had not considered it is the right time now to get it into the debate.

Deputy P.J.D. Ryan:

My question to the Chief Minister again is not exactly what you are here for; it is not to do with human

rights, it is to do with the fact that the Isle of Man has received royal assent for something which I believe the UK Treasury were quite unhappy about, this question of having the company act as an agent for paying tax on behalf of an individual. Let me ask the Chief Minister, do you think this is a precedent constitutionally that is relatively new that has just been set, because my understanding is that the Privy Council, in effect, has said to the Isle of Man, "Although we do not agree with what you are proposing we are going to let you take it further to the European Council that looks at business code". This is a first, is it not, Chief Minister? Is this not quite significant constitutionally?

Senator F.H. Walker:

I do not think so. I have not yet been able to study the Privy Council position; it is new. I do not think so.

Deputy P.J.D. Ryan:

I cannot remember a situation in the past where if the Privy Council has not been happy, or the UK Government have not been happy, with something being proposed that they have allowed it to go past the UK.

Senator F.H. Walker:

No - there have been precedents in that context certainly.

Mr. J. Harris:

In fact we had one of our own; which is the 1998 Finance Law where they were not happy.

Deputy P.J.D. Ryan:

Maybe I am reading a little bit too much into it.

Senator F.H. Walker:

I think you are. Picking up on John's point, the 1998 Finance Law was held up for some considerable time by the UK Government. In fact they did not put it to the Privy Council because they were unhappy about it, they just held up the whole matter going to the Privy Council. Eventually it did go to the Privy Council because we applied some very serious pressure, and this is in the public domain, we threatened the UK Government with legal action if they did not take it to the Privy Council, so it was put to the Privy Council and it was approved. I think there is no --

Deputy P.J.D. Ryan:

Because that would be a matter of domestic law, but this is something which is being, as far as the European code is concerned --

Senator F.H. Walker:

No, this may have been domestic law, but it had international repercussions, it had a big international issue attached to it. I would not read too much into it. I do not think a constitutional precedent has been set here, but I would reserve final judgment until we know more.

Deputy P.J.D. Ryan:

It is just an interesting side issue on the Isle of Man --

Mr. J. Harris:

I think the inverse; if they had withheld royal assent would have been an interesting constitutional precedent issue, because there is the convention that they cannot withhold consent at Privy Council level on something that is constitutionally deemed to be domestic competence of the Islands, and obviously taxation is deemed to be in the domestic competence sphere.

Senator J.L. Perchard:

Well, sorry for sending the sidewinders on human rights, but there are 2 issues that we have flagged up already that we will pursue with vigour.

Deputy G.P. Southern:

Frank, before I do, it seemed you were about to say something; you seemed to be about to say, "It has gone further" or, "They have gone further", when you were responding to Patrick's question. You were going to say something and you stopped.

Senator F.H. Walker:

No, I do not think so.

Deputy G.P. Southern:

I mean obviously you are not bringing forward something that you suspect is going to be non-compliant with the EU Code of Business, on all business taxation, and what is your understanding of the changes you have made from the original plans, which, if you like, believe it to be discompliant?

Mr. J. Harris:

Sorry, when you say, "the original plans", you mean the ones that were presented in 2003 to the Ecofin Council?

Deputy G.P. Southern:

Yes.

Senator F.H. Walker:

In terms of the changes in look through?

Deputy G.P. Southern:

Yes, why do you think it is going to be compliant this time?

Senator F.H. Walker:

Well, first of all let us go back to the original position that, and I think you are well aware the Zero/Ten proposals have been, in outline, approved by Ecofin, and we all accept that, I think, as a matter of record. What we have got then are a number of issues of detail, which are subject to negotiation. I think the important point to make here is that we are not here looking at a black and white legal position in terms of our compliance with the code of conduct; we are looking at a political position, and our political positions are subject to discussion, negotiation and agreement or not, as the case may be. There are a number of detailed issues under Zero/Ten, which are still the subject of discussion and, if you like, negotiation with the UK Government and we anticipate that will remain the case for quite some time as yet. But at the same time it has to be said, and I think you know this too, that the UK have supported our overall proposals to Ecofin, indeed they presented them to Ecofin on our behalf in the first place. But discussions and negotiations are continuing on a number of aspects for the detail. But we have no reason to believe at this point that any of it is not going to be acceptable. The UK Government's position is that when they go back to Ecofin, which is scheduled to be -- it depends, we may be quarter 2, 2007, we may be quarter one, 2007, it depends, there is a decision to be made there; whether we go together with Guernsey or whether we go separately. The UK's position is that they, for their own reasons of course, as one can well understand, they want whatever they put to Ecofin to be as simple as possible. They do not want a detailed discussion at Ecofin on some complicated details. So, there is a position, and that suits us too, of course. There is a position there that we are seeking to arrive at with the UK where they feel comfortable with the overall position we are taking in detail, and they think it is clear enough, simple enough if you like, to enable them to win the day at Ecofin. That is what we are mutually trying to achieve at the moment, but discussions and negotiations continue. There have been a number of meetings, and there will be a number of other meetings before the whole thing is finally ironed out. But there has been no objection raised at this point to any of the fundamentals that we are putting forward.

Deputy G.P. Southern:

No, but nonetheless we have got a different package of measures than we had originally. Can we go through some of the changes?

Mr. J. Harris:

What went to Ecofin through the code group in 2002 was a set of proposals that were sent to the UK Paymaster General by then Senator Pierre Horsfall in a letter in the middle of October of that year, which outlined the basic architecture of Zero/Ten, which is simply that; Zero/Ten, together with an articulation of why we felt that was compliant with the basic objectives of the code, which was to

eliminate discrimination in taxation of companies between resident owned and non-resident owned. So, that was pretty much an outline proposal, but it was backed by more detailed discussions with the UK about some of the consequential effects of that, of which obviously the famous look-through provisions would be one. You have 2 levels of acceptance; you have a level of detailed acceptance for the UK who were sponsoring the proposals, and Ecofin itself was considering basic architecture. So, when you go back a second time now, that will basically be the same situation; the UK will want to be in a position to answer questions about this, not least because this Zero/Ten Design Proposals are in the public domain; but they would wish nevertheless, as the Chief Minister just said, to stay on the main fundamental design to achieve the basic objective, which is to make sure that there is no discrimination in taxation circumstances between one sort of company and another. Right throughout the process the UK has always maintained a very resolute line on look-through whether in full, as was originally conceived here in Jersey, or now in part, which is the new design proposal, which is deemed distribution on a 3-year scale as opposed to year one. In fact the UK has maintained a resolute line that that is taxation paid directly by the shareholder in the personal tax realm, outside the remit of the code of conduct, consistent with tax practice in all the member states, and not for discussion.

Senator F.H. Walker:

I mean that is a matter of documentary evidence, not just verbal assurances, and that is the fundamental. I think what has happened with -- I know what has happened with the proposals, as with all other such fundamental new proposals, they have been the subject, of course, of continuing discussion and continuing advice from any number of people, and continuing consultation; and they have evolved. But I do not think you should read anything too much in terms of the acceptance of the EU and Ecofin into the changes that particularly apply to look through.

Deputy G.P. Southern:

In which case, that brings to mind the question for me, why have you moved away from a complete look-through to a partial system? It seems to me that if that was being resolutely supported by the UK you have no need to move from it.

Mr. J. Harris:

Well, that was not the reason for moving. The reason for moving was to try and find a way in which companies could continue to reinvest their profits in their own company for a year and help with their cash flow position, so it was more an investment and economic argument than purely Jersey's domestic circumstances and the EU code of compliance.

Senator F.H. Walker:

I think that point has been stated very clearly, that the changes have not been driven because of the comments, discussion, pressure from the UK or the EU. They have been driven purely on the back of local consultation, feedback and input to suggest that there is a fairer way and a better way to structure it

locally. So, there is no international significance in the change.

Senator B.E. Shenton:

I mean could you argue that the look-through arrangement is a change in personal taxation?

Senator F.H. Walker:

Yes.

Senator B.E. Shenton:

And therefore is not really part of the Zero/Ten?

Senator F.H. Walker:

Yes, absolutely (...several inaudible words).

Senator B.E. Shenton:

That is way, I was going to say, you have got around it, but that is the way --

Senator F.H. Walker:

I mean not only do we argue that, Ben, it is totally accepted by the UK, and indeed by the EU.

Senator B.E. Shenton:

But it is within the Zero/Ten design proposal, which is --

Mr. J. Harris:

Well, that is the problem because the Zero/Ten design proposal, if you put it out for public consultation and it purely deals with the EU code of compliance it will only deal with the narrower circumstances of company taxation. But you cannot do that because you have to tell everybody what the consequential impacts are. So, you have to talk about RUDL (Regulation of Undertakings and Development), you have to talk about shareholder taxation.

Senator B.E. Shenton:

But then (...several inaudible words) is going to get thrown back at you.

Mr. J. Harris:

Sorry?

Senator B.E. Shenton:

But it is going to be thrown back at you.

Mr. J. Harris:

There is that risk.

Senator B.E. Shenton:

They will say, it is not personal, it is corporate, because it is all part of the package.

Mr. J. Harris:

Well, there is that risk. The UK position is very clear on this, and when I say they do not want this to be for discussion it is because their position has consistently been for all discussions in the UK, not just peculiar to Jersey, there is a separation between corporate taxation and personal shareholder dividend taxation, whichever way you want to describe it. That view is not universal in the EU, and the Germans, for example, have tried to bring personal taxation within the remit of the code of conduct, and they failed, but nevertheless they had a public position, which was to bring it within, and many of the member states, particularly the new member states, the UK and Ireland, have consistently been opposed to that, and they have not done so for that reason; there is no consensus. So, the UK want to be in a position, if challenged, nevertheless to have some knowledge and detail of our look through arrangements so that they at least have the information, but their viewpoint is that that is not part of the essential presentation.

Deputy G.P. Southern:

Yes, which brings us back to the political point, it is a political process, and the (...inaudible) of the interpretation of, "Yes, you put that over there and that is personal taxation, and that is actually just a back door way of getting around what we are trying to do".

Senator F.H. Walker:

Well, I would not actually call it a back door way of getting around –

Deputy G.P. Southern:

Well I'm talking about an interpretation, a political interpretation.

Mr. J. Harris:

That could be an interpretation.

Deputy G.P. Southern:

As you said before, it is not a black and white issue; it is a grey issue because it is political.

Senator F.H. Walker:

True, but at this moment in time certainly we have no reason to believe, and it has not been questioned, that the look-through provisions are part of the personal tax structure and therefore not dealt with by the

code.

Deputy G.P. Southern:

Unless, of course, it involves company if we're talking about a different aspect – the deemed attribution.

Mr. J. Harris:

Well, there is a judgment, and there is a judgment exercised by some who think that that goes across the line. There is a statement the EU itself has made about tax policy in the European Union going back to 2001, and that is pretty unequivocal. Now, they say personal income tax falls in its entirety under the sole responsibility of the member state. We obviously need to extend that to ourselves; we are outside the EU but if that is good for the member states among themselves then surely, by definition, it should be good for us. So, personal income tax is dividend, shareholder taxation, in that realm. If you cross the line and make the company pay the tax liability on behalf of the shareholder, arguably are you into, you know, have you gone across the line into company taxation? That seems to be a dividing line. There is a lot of consensus on why the Isle of Man has some problems.

Deputy G.P. Southern:

Can I bring this then to differential treatment of locally owned companies and borrowing companies, specifically on the RUDL tax. A RUDL charge – careful -- for example it has been put to me that because it is tiered to various sectors, although it is called a charge it appears to be a tax, or it has the structure of a tax which applies to non-locally owned companies and therefore of itself risks falling into the EU code of business taxation again.

Senator F.H. Walker:

There are remaining issues to be discussed on those. I mean let us be clear, and I think you will know this too, RUDL is politically driven, there is no doubt about it. There has always been quite justifiably the concern that non-locally owned companies were enjoying a free ride basically on the back of the Zero/Ten proposals, and one can well understand opposition to any proposal, which says that the locally owned company is going to pay through the look through provisions, but a UK company escapes. The RUDL proposal, which has come through relatively late in the day, is to try and overcome that imbalance. Now, whether we can pull that off at the end of the day remains to be seen. It is still the subject of political, as I say, discussion and negotiation. It is very much at this moment one of our proposed --

Senator J.L. Perchard:

But the point that Deputy Southern is making, Chief Minister, is while we will be talking to the Treasury Minister about our concerns over RUDL, the concerns that have been expressed, will it create an interest by Ecofin? Will Ecofin be interested in the fact that it really is a tax on non-locally owned businesses?

Senator F.H. Walker:

Well, I think the first hurdle we have got to overcome with RUDL is get the UK Government to understand what we are doing and why exactly, what the nature of it is, and we will have to take some decisions no doubt later in the day depending on how successful or not we are --

Senator B.E. Shenton:

Sorry, can I interrupt you? Why does the UK Government need to get involved if it is just a charge?

Senator F.H. Walker:

Well, that is a very strong argument, Ben, but it is part of the package, and Geoff is right, that you could argue that in effect it is a tax; you could argue. I think we have got strong grounds for continuing with it and pushing it through, but I could not tell you today that the RUDL charge is something that has got universal general acceptance, because it has not.

Senator B.E. Shenton:

The other problem, of course, is W.H. Smith and Boots will not pay any less tax --

Senator F.H. Walker:

No, they will not, absolutely.

Senator B.E. Shenton:

So, it is --

Mr. J. Harris:

There are 2 aspects.

Senator B.E. Shenton:

So, have we looked at inflationary aspects of it?

Senator J.L. Perchard:

Let us try and not get into the fiscal disadvantage of RUDL.

Deputy G.P. Southern:

No, let's stay there -- if it's a tax then it is claimable back and it is not an additional charge. If it is a charge then it is an extra charge.

Senator F.H. Walker:

We are defining it as a charge, for sure.

Senator J.L. Perchard:

Right, so the package, including RUDL, will go to the Treasury for approval, and the Treasury will then take it, including RUDL?

Mr. J. Harris:

I always have a problem with the word “approval” because the constitutional position is not for approval. We are in a political process, we are voluntarily in it; there is no legal binding requirement to comply. There is an economic and political, sort of, argument for compliance, that is slightly different, so it is an odd one. Treasury approval, as such is slightly a misnomer, it is about getting them to sponsor and support what we are doing to win the argument with the EU. But we can talk about the RUDL part of it as well.

Senator F.H. Walker:

At the end of the day we have voluntarily signed up to this process. Now, we could, if the parameters change completely, we could voluntarily unsign ourselves from the process. Now, whether that is desirable politically or economically of course is a heck of a question, but from a constitutional position we are able to do that.

Mr. J. Harris:

I will answer your question on RUDL though. We have talked to the UK about RUDL, and I have a great deal of sympathy for them because they do not understand it very easily, and I think that is true of a lot of people, and it is difficult to explain. They equally do not have a view as yet, but they are thinking about whether it could be characterised as a charge or a tax, so right there is still an open discussion to be had, and I think it is clear that they take the view that it is a matter that probably should not be in the presentation of the proposals to the code, which is concerned with other criteria, and meeting other criteria, and that it probably belongs in some other place. But of course the difficulty once again is that you have to deal with the consequential impacts in one document and therefore it is visible. So, they want to at least be in a position of being able to explain it, and, if necessary, defend it, but then they are also saying, “Well, it rather depends on whether or not you are going to keep it in Jersey”. You know, we are not going to deal with a problem unless we know we have a problem, but by that time you have decided you do not want it, so discussion is at that point in the sequence.

Senator F.H. Walker:

We have got to remember that it is still the subject of consultation. I think it was Geoff or Ben who raised the issue has the inflationary aspect been considered and so on, that is still part of the subject of local consultation and discussion, as it rightly should be. But should we decide to go ahead with it at the end of the day then one of the options open to us is actually to take it out of the code of conduct measures and do it anyway; do it completely separately and then we are talking about a charge and we are talking about our absolute right and ability to introduce it,

Senator J.L. Perchard:

It is not related to Zero/Ten at all.

Senator F.H. Walker:

No.

Mr. J. Harris:

Well, no, but you would need confidence at that point that it is a charge not a tax.

Senator J.L. Perchard:

Yes.

Mr. J. Harris:

So there is some definitional work to do in Jersey if we get to that point.

Deputy G.P. Southern:

Well, then you cannot really tell them that this is part of the package, we will take it out. "Oh yes, but we are really going to bring it back --"

Mr. J. Harris:

No. If it is a tax, but if it is a levy, a charge, well then it is not a general taxation measure on a company, which is what the code is concerned with.

Senator J.L. Perchard:

Well, I think that has provided clarity to that. Obviously there are a lot of other issues, this is just one, you know, could not resist; there are a lot of issues surrounding RUDL, but that is for another day. On compliance, Geoff, I know you have been asking the Minister of Treasury and Resources in the States many questions on compliance; are you satisfied with the answers and would you like extend further questions to the Chief Minister?

Deputy G.P. Southern:

Thanks for the long introduction, but no. We have explored 2 issues today and the general principles around what stage we are and what the process is, I do not have a problem with that. I mean that is now, you know, fairly clear. There are issues that still need to be decided upon. In particular, as you have just pointed out, in comparison with, we are fortunate that the Isle of Man's going to go for it first and they can take the first blow and we will see where we are then.

Senator J.L. Perchard:

Well, I just wanted to see if you were ready to explain that.

Senator F.H. Walker:

I think there is an important point to make here, and I think it follows from what Geoff has said. The proposals on the table currently are not necessarily - I mean, again everyone knows - is not necessarily what the final proposals will be, because they are still subject to local consultation, they are still subject, as I said earlier, to discussion and negotiation with the UK Government in terms of what they are happy to take to Ecofin on our behalf. So, we should not believe that we have finished the process. It is work in progress.

Senator J.L. Perchard:

That is absolutely right. That is why the scrutiny panel is quite keen to be involved at this early stage rather than just looking at the final document and being critical of it all, we'll tactically try and influence it. That is fine. So, could you explain the procedure to the panel with regards to seeking Ecofin's approval? Has it always got to go through Her Majesty's Treasury or is there any opportunity to talk directly to Europe, and would it be in our interest ever to do that?

Senator F.H. Walker:

We are not members of the EU, so we cannot be represented at Ecofin. Ecofin is an EU body, and therefore in terms of formal representation the UK will continue to present crown dependencies case, and not just Jersey obviously, Guernsey and the Isle of Man as well. Whether we ever met with and spoke to Ecofin informally, who knows? I mean we have had discussions with European officials, that is for sure, but in terms of the official presentation of the crown dependencies case it will be the UK that will present it.

Mr. J. Harris:

Can I make a supplementary point? We have achieved an ability to interact directly with the EU with UK blessing in another field, which is one of the related fields, it is the European Savings Tax Directive, where we have been able to both negotiate directly with the member states actually not the commission; the member states, the group that were acting together in the Savings Tax agreement, and also to ultimately sign individual bilateral agreements with member states themselves to give effect to our obligations (...inaudible) we took on. But the key point there was that the UK entrusted us to do that. I think the difference with the code is that the code is in the area of UK red lines on taxation itself, which is actually quite helpful to us, and one example of that is the differentiation between the code's remit for company tax and intruding into areas of personal taxation, which the UK very firmly believes is very much part of the sovereign states' responsibility, any indivisible responsibility. So, for that reason they are less keen that we go and talk as a separate delegation, basically, to the EU because they feel there is a coincidence of interest here in terms of tax policy, and that they started out representing us in this respect so they see no reason particularly halfway through the process to stop that and trust us to do it

ourselves when they have got their own interest at stake as well. So, arguably it was not quite so clear cut; and nothing like as clear cut as with the savings tax directive. They obviously had an interest in Jersey and the others participating voluntarily in the same sector in the campaign. It was easier for us to represent ourselves in that respect. So, I think that's quite key to understand the UK's -- it helps us because, you know they have areas in tax policy that they want to prevail within the EU which are aligned with our own position and vice versa.

Deputy G.P. Southern:

Frank, you have often come out and made statements against the payroll tax, can you explain to us why and how you consider clearly that the RUDL charge is not a payroll tax, although it looks to my view, it has certain --

Senator F.H. Walker:

First of all the RUDL charge, as I said earlier, is designed to overcome a political issue with a limited number of companies. As far as local companies are concerned it is not going to constitute an additional charge. So, a payroll tax, of course, would in terms of the way it was discussed at the outset as one of the options forward to build a Zero/Ten poll would have applied, one assumes, and certainly that was the thinking at the time, to all companies locally owned or not. So, I think there is a very significant difference between a payroll tax and what is being proposed under RUDL.

Deputy G.P. Southern:

Can I take it a stage further? But again, maybe I am coming back to the same point again and trying to get a little more out of you. In graduating it by industry, and therefore by profit per employee, presumably, it then starts to look awfully close to a payroll tax. Is that not the case. Do you absolutely deny that, or do you not see that link at all?

Mr. J. Harris:

I would argue a payroll tax is levied on payrolls and wages, not on head count. So, technically it is not a payroll tax because it is not levied on payrolls, but I take your point that there is an element of graduation in it.

Deputy G.P. Southern:

But if they charge the banks twice as much as they charge the farmers --

Mr J. Harris:

The defence, if you like, in terms of an apparent contradiction with previous stated policy is that it is very much a limited payroll tax, if it is a payroll tax at all, accepting your definition for a second, because it is only targeted at one group of shareholders. It is designed very specifically to exonerate the export driven industries in Jersey that you are trying to protect from the problems of wage rise inflation in terms of the payroll tax.

Deputy G.P. Southern:

At which point I would seek Frank's agreement with that statement? So it is a limited payroll tax?

Mr. J. Harris:

I said, if you accept that definition. I personally do not, because I think payroll tax is levied on payrolls.

Senator F.H. Walker:

I mean I personally do not think that is the point; we abandoned the idea of a universal payroll tax because one of the principal options was; is it a payroll tax or is it GST? In many respects a payroll tax is the easiest way forward until you look at the competitive aspect of it, and we think Guernsey have got it very, very wrong in terms of what they are proposing, and that is a matter for them. As John has said, the effect of the RUDL charge is nothing like the effect that we would have experienced had we introduced a full-blown payroll tax. I mean it is a very limited --

Senator J.L. Perchard:

I mean really, Geoff, I think it is a little bit unfair on the Chief Minister. We will save our ammunition for the Treasurer.

Senator F.H. Walker:

I think it would be a shame if any argument was put forward, "Well, there has been a total inconsistency here because originally the Treasury Minister and me and others said we were opposed to a payroll tax". If the argument is, "Hang on, you have really imposed a payroll tax through RUDL, you are being totally inconsistent", I really do not think that is a viable argument.

Senator B.E. Shenton:

Can I just finish off on RUDL and then move on. I have not actually met one professional, one businessman or one politician, including some of your ministers, that is actually in favour of RUDL. Is there anyone in favour of RUDL apart from Mr. Crowther? Because you don't look too convinced either -- (Laughter)

Deputy P.J.D. Ryan:

Can I put the same question in a slightly different way? RUDL, you have got to have limited trading partnerships so that existing limited companies can avoid it locally trading. You have got to have the extra costs involved on accountants and lawyers who are going to have a field day for all the local companies, and a lot of local companies will not be able to change easily. They will have agreements with their banks and their --

Senator J.L. Perchard:

The question, Deputy?

Deputy P.J.D. Ryan:

The whole thing. I mean and we go on and on and on, and all for £5 million; all this for £5 million.

Senator F.H. Walker:

Yes, but it is not £5 million.

Deputy P.J.D. Ryan:

Let me ask the question. It just seems to me - I'll make a statement - it just seems to me is it worth it? I would like you to tell me, in your own view, in sort of marks out of 10, how far you think it is worth chasing that £5 million for political reasons, which are not really any, it seems to all of us, the people that Ben has spoken to and the people that I have spoken to, it is pure politics, it does not make economic sense. But marks out of 10, you know, where would you personally put it?

Senator F.H. Walker:

I am not going to go there.

Deputy P.J.D. Ryan:

I didn't think you would, but I thought I'd ask the question.

Senator F.H. Walker:

But let us be clear; right from the outset there has been a major political issue over the fact that in Jersey, not overall, but in Jersey non-Jersey owned companies will no longer pay tax. I mean the fact that they are now going to pay the full rate in the UK, or wherever, so they do not actually benefit from it has escaped a lot of people, but at the end of the day you have got to say that they will not be paying tax in Jersey anymore where they were previously, and we have looked and we have looked and we have looked at the best way, if there is a way, of overcoming that issue. Now, the only one that has come forward so far which has any wings at all is the RUDL charge. Now, whether it goes forward in the end of the day following consultation, and it clearly is being consulted upon with local professionals and many others, whether it goes forward at the end of the day that remains to be seen. But the £5 million is not the issue, it is not deemed to be in itself a necessary money raising issue, it is there to overcome this political --

Deputy P.J.D. Ryan:

It is political, purely political.

Senator F.H. Walker:

Yes.

Senator J.L. Perchard:

I think we have done that one to death, we have huge issues on RUDL.

Mr. J. Harris:

I was going to basically make the same points, that the price of RUDL is demonstrated by the complexity, et cetera, all the points that you have made, the price of equity, or the perception of equity, and that is what a consultation mechanism should be, and to answer your first question is there anybody who is in favour of it --

Deputy P.J.D. Ryan:

I do not think anybody is criticising. I do not think anybody is, to be fair, criticising the effort. Most people are saying, "Nice try, but, you know".

Mr. J. Harris:

The dynamics of that were being introduced by the Chamber of Commerce.

Senator B.E. Shenton:

I think everyone agrees with the concept of catching those people, but RUDL is probably not --

Senator F.H. Walker:

If the scrutiny panel can come up with any way of overcoming the political issue by finding a method of --

Senator J.L. Perchard:

We may. We have had some embryonic ideas, which we will be sharing with the Treasury. Can we move on away from the sort of fiscal side of the consequences of Zero/Ten and talk more about why we have invited the Chief Minister here today? Chief Minister, we all know how important the finance industry is to Jersey. If Ecofin took a tough line with Gibraltar and the Isle of Man, Guernsey, Jersey, an extremely tough line, what would be the consequences for the Island and what would your advice be to the States of Jersey?

Senator F.H. Walker:

It depends of course what you mean by a "tough line". If you mean would they completely do a one eighty and oppose the principle of Zero/Ten per se, well that is almost unthinkable now, we just do not believe that is going to happen. If they take a tough line in terms of some of the detail, then we would hope to be in a position to resolve that because it is detail and there are obviously many alternatives.

Senator J.L. Perchard:

Particularly the deemed distribution is the only area where they really could. That is the area. Attribution is fine, it is taxable, deemed distribution, would you agree that is the area they may?

Mr. J. Harris:

Personally, I cannot see how they can oppose it. They have a very clear definition and the code remit has been reconfirmed as a clearly defined distinction between company tax and personal shareholder tax, so I do not think it is something they can overturn among themselves, at least as they have recently redefined the remit of the code group.

Senator J.L. Perchard:

Is deemed distribution the area where they will really have an interest?

Senator F.H. Walker:

It has to be said that deemed distribution does not look like being a problem, certainly with the UK.

Deputy G.P. Southern:

Can I just clarify? If it got really sticky and we cannot find a way of getting forward a package that is completely unacceptable, is going it alone and saying, "Oh, well, we will do something that is not compliant", is that an option or is not on the table?

Senator F.H. Walker:

No, it is an option that is open to us. Whether it is wise for us to go down there we --

Deputy G.P. Southern:

Yes, I am not --

Senator F.H. Walker:

Yes, you have to consider the circumstances at the time.

Mr. J. Harris:

Sorry, there is a halfway point between then and now; the 2 things you have just described, which is distribution only. You only tax shareholders on actual received distributions, and obviously you do not deem any distributions.

Deputy P.J.D. Ryan:

Yes, this is the Guernsey position?

Mr. J. Harris:

This is the Guernsey position. The difficulty with that, of course, is a fiscal cash flow problem, but there is -- that is the halfway house and then you are in constitutional territory, which is for you to say, "Sorry, but ultimately you do not have any rights to legislate for us on this and tell us what to do and the code of conduct" but that's of course --

Senator B.E. Shenton:

Well it's not only cash flow because you could, you know, build up all the dividends in the company and then sell the company for capital.

Mr. J. Harris:

Yes, well, you could have distribution only, but you can still have on the other side anti-avoidance mechanisms, which I am sure you will want to talk to the Treasury Minister about on the 4th of August, which would compensate for some of the risks that you would run in terms of, you know, even capitalising profit.

Senator B.E. Shenton:

Can I just ask you about IBCs (International Business Company), because I bumped into the MD (Managing Director) of the biggest IBC over here, and he would very much like a tiered structure going forward but that has been ruled out, has it not?

Mr. J. Harris:

Tiered structure in terms of different rates of tax? Not a starter. You cannot have more than one standout rate of tax relative to the general rate of tax in your economy of companies. So, you have zero, you have 10 and that is your lot.

Deputy P.J.D. Ryan:

How are we managing 20 then?

Mr. J. Harris:

Because utilities are sort of a grey area which are defined to be non-mobile activities, which --

Deputy P.J.D. Ryan:

And investment companies?

Mr. J. Harris:

No, investment companies are zero tax, but their shareholders, of course, are taxed on dividends.

Senator F.H. Walker:

It is clearly in Jersey's best interest if we can get away with basically a 20 per cent rate for utilities and

want to do so, because more tax revenue basically. It does not mean they are paying any more tax than they are today, it is the same level. Whether we can have effectively a 3-tier system, which is pretty well where we are going in this context, or whether at the end of the day we will have to settle for a 2-tier remains to be seen, but it is something that is well worth us pursuing.

Mr. J. Harris:

Gibraltar have already achieved, just that a differential rate for utilities of 35 per cent. So, that was accepted by the code group because utilities are non-mobile, because they are only peculiar to the jurisdiction in which they operate in.

Senator B.E. Shenton:

So, you are still looking at the cap on IBCs?

Mr. J. Harris:

No, because that is probably going to create, in effect, a third rate of tax, because what you are doing is blending zero and 10 and achieving an output which is somewhere between the two, and that appears to offend the principle that you have a 0 rate and one other rate.

Senator B.E. Shenton:

So how are you going to get round it?

Mr. J. Harris:

You may not be able to get around it because you need -- this is a statutory world you are moving into here. There is not the discretion to grant to individual companies designer rates of tax which they negotiate themselves, and that is a clear consequence of zero ten.

Senator B.E. Shenton:

But surely a company is not going to suddenly pay 10 per cent that is now paying 2 or less.

Mr. J. Harris:

There are always going to be winners and losers. One sized hat is not going to fit every single company circumstance.

Senator J.L. Perchard:

Again, gentleman, I have got to pull you back to the reason why the Chief Minister here. These are questions that we know that we are saving up for the Treasury.

Deputy G.P. Southern:

Can I ask your permission, Chairman, just ask the Chief Minister what his most recent picture is of the

impact of the IBCs and what that is likely -- initially 2 years ago we were talking about "some of them will leave", do we know what we have got in the picture, or do you have a picture?

Senator F.H. Walker:

I have no information about IBCs leaving. I mean, clearly, and I know who Ben is referring to, clearly there are continuing issues in that respect, and we have done a very good job for them by winning them quite a lot of time - a very good job - and there will continue to be issues there, but the fact is if we want to protect the vast part of our finance industry, as John has said, there will be a number of winners, there will be some losers.

Mr. J. Harris:

A minority of losers.

Senator J.L. Perchard:

I think on 4 August we have got the Treasury Minister here at 9.30 a.m. and these are areas that, as our panel well knows, that we have an interest in.

Deputy P.J.D. Ryan:

The issue of IBCs to some degree is tied up with the issue of -- I was going to ask you the question on what is the progress on double taxation agreements with other countries? It is not strictly related, but --

Senator F.H. Walker:

No, it is not related at all.

Deputy P.J.D. Ryan:

It is not. I was asking you while you are here, what is the progress on it?

Senator F.H. Walker:

You are talking here, I think, about tax information exchange agreements?

Deputy P.J.D. Ryan:

Yes, but also the question of double taxation agreements, which is also --

Senator F.H. Walker:

I will ask John to deal with the double taxation thing. The TIEAs are in course of negotiation still with a number of member states, and we are hopeful we will start signing in, in the very near future.

Deputy P.J.D. Ryan:

Are we going to see any more double taxation agreements as a result?

Senator F.H. Walker:

Well, that depends.

Mr. J. Harris:

What you are going to see is, hopefully, elements of double taxation agreements, which would be negotiated between ourselves, OECD (Organisation for Economic Co-operation and Development), you are talking OECD member states, of course those happen to also be in many cases EU member states as well. A good example of that would be, where for example with the French we have cross-border workers and at the moment they suffer double taxation on salaries, so that is obviously something that we would like to be on the table. Now, the problem with the full blown double tax agreement is philosophically, it is quite difficult to achieve with a zero tax jurisdiction for companies, but there are nevertheless some areas, pensions is another one, to say double taxation of salaries and certain circumstances where you have got near neighbours where there are discussions to be held. Our position on this is that we are being asked to be held to the information exchange standard, information exchange on request, and Jersey is quite happy to do that, but there are competitors, notably Switzerland, Singapore and others, who are not prepared to be held to the same standard, and in some cases those are OECD member states themselves. So, what we have to basically say to these countries is, "We are happy to comply with this, but in the absence of participation by major competitors we want something in return", and that is a negotiating leverage position that we have, and therefore you can put elements of double taxation on the table, but you are not necessarily going to get full double tax agreements. Some countries will consider them, even with a zero tax jurisdiction - they do exist in the world.

Senator J.L. Perchard:

I am sorry Chief Minister, and you have already overstayed the time that you allocated for us, and I thank you. If we could just wrap up on the constitutional points and any Ecofin points that members want to ask you. Can I just ask a question; you have advised us that the Treasury has agreed to take the Isle of Man Zero/Ten proposals to Ecofin, and that will happen when and what would be the likely timescale for a response?

Senator F.H. Walker:

Isle of Man is due to go to the code group in October this year.

Senator J.L. Perchard:

How long would they consider before responding, do you think?

Senator F.H. Walker:

I have no idea.

Mr. J. Harris:

Well, I mean I think it would be quite quick. I mean it depends how complicated it becomes, but assuming that it all works and that they have no problems, let us just say, then the code group will have a position on the Isle of Man package, which will then just wait for the next Ecofin meeting, which tend to be held every 3 months. There is usually one at the beginning of each year, so you would know if the UK chose that the Isle of Man be presented to Ecofin in isolation from the other crown dependencies that would be early in 2007, but they might take the view that agreement of the code group is good enough as a precedent to look at everybody else's circumstances as well and so the whole package, the whole element sort of co-complies for all 3 crown dependencies, you can go to Ecofin in the middle of 2007.

Senator J.L. Perchard:

This leads me onto the obvious next question; would it not be prudent to delay Jersey's final position on Zero/Ten until there has been a position taken by Ecofin on the Isle of Man proposal?

Mr J. Harris:

But there is one major problem with that, which is that we had a commitment to comply by 3rd June 2008. So, that means legislation in place by 3rd June 2008, so you have got to align the legislation timetable with the acceptance timetable, which is why the Chief Minister said, "Well, maybe it might be in our interest to get a discussion with the code group, you know, the same time as say Guernsey" so you know where you stand, you know what problems, if any, there are that need to be resolved so you have got enough time to get the legislation through.

Senator F.H. Walker:

But, nevertheless, the fact is that the Isle of Man going first is to our advantage.

Senator J.L. Perchard:

Of course. Their proposals are subtly - I was going to say significantly - but they are different.

Deputy G.P. Southern:

It is a final question from me and then I will shut up. I just wanted to get the Chief Minister's understanding, initially when we set out we were talking about, yes, we are giving up some taxation this is the size of the hole, and rough figures we were told £60 million from Finance and £30 million from the rest. That £30 million was largely from UK-owned businesses operating here, and therefore –

Senator F.H. Walker:

No.

Mr. J. Harris:

Well, I'm only nodding -- I am not nodding in agreement to the thing, I am just nodding in agreement to the outline figures that you gave.

Deputy G.P. Southern:

I think I picked the wrong figure. So, I will ask the only question, the general question; as we go to Zero/Ten, the zero bit means a tax bonus for the UK Government from its UK-based operators here?

Senator F.H. Walker:

Yes.

Deputy G.P. Southern:

What is your understanding of the size of that bonus for them?

Senator F.H. Walker:

Circa £15 million.

Senator J.L. Perchard:

Any further questions?

Deputy P.J.D. Ryan:

Can I just clarify that; that is £15 million that we are losing or --

Senator F.H. Walker:

Yes, it is £15 million we are losing, yes, and they will gain. It ends up being the same because you are aware that tax paid in Jersey or by companies currently is allowable against their tax in the UK and that will just disappear.

Senator B.E. Shenton:

One last thing, are we strong enough in our negotiations, or do we have to be subservient to the UK Treasury? I mean, when you meet them do you meet them as equals or do you meet them as --

Senator F.H. Walker:

Too right - yes, absolutely. But we cannot escape from the position here. If we are talking strictly code of conduct we cannot escape from the position that it is the UK who are the members of Ecofin and the UK who present our case. Now, that does not exactly put us on a level playing field. In every other respect we are on a level playing field and we negotiate darn hard. There is very clear evidence of that in something I said much earlier when we had this position over the 1998 Finance Bill and we threatened and formally threatened to take the UK Government to court if they did not do what they were obliged to do. So, we do negotiate from a strong position, but at the end of the day if we are going

to win the support of Ecofin, and let us re-emphasise the point, we could move forward without the support of Ecofin if we decided that was in the overall interest in Jersey, but at the moment we are very clear that winning the support of Ecofin is the best way forward. To do that the UK Government have got to therefore have enough confidence in our position, and what the position it puts them in with their colleagues on Ecofin to strongly present our case, and that is what we are seeking to arrive at.

Senator B.E. Shenton:

But could it not be argued that the whole tax package has been put together badly, because the look-through as a personal taxation aspect, so we have --

Mr. J. Harris:

Put together badly by who?

Senator B.E. Shenton:

Well, by putting it all into one package.

Mr. J. Harris:

I see what you mean, sorry. I thought you meant put together badly by the EU.

Senator B.E. Shenton:

No, putting the Zero/Ten package together. You have included personal taxation within it, which you do not need Treasury approval. You have included charges within it, which does not need UK approval, surely we should have just gone to them with the bare bones of the Zero/Ten. Where we get the extra revenue from is nothing to do with the UK Treasury.

Senator F.H. Walker:

That is a fair point, but John made the point earlier, quite rightly, the Zero/Ten document was principally aimed at the local market. The Zero/Ten document was not, in itself, aimed at the international position, it was aimed at the local people so they fully understood all the consequences.

Mr. J. Harris:

If you are going to put a document into the public domain, it is in the public domain.

Senator B.E. Shenton:

Well, you can do Zero/Ten on the company side, and, by the way, we're also going to do personal taxation issues and we're going to do --

Senator F.H. Walker:

You have got to explain, Ben, to local companies, local shareholders and local individuals what the

overall effects of the package is, and that is what the Zero/Ten document does. It does not stop us, and I think we referred to this earlier, it does not stop us at the end of the day, probably if we decided we wanted to go this way, removing RUDL from the package. You are quite right, I mean in terms of look-through it is not a part of the negotiating package with Ecofin. It has not gone to Ecofin because it is a personal tax measure, and we do not expect it to go to Ecofin, but in terms of presenting a document which local people can understand and get the full picture of, of course it had to be included.

Senator B.E. Shenton:

Yes, but when you're dealing locally and when you're dealing – it's not the same --

Senator J.L. Perchard:

I think you made the point, Ben, that perhaps, what you're suggesting is there could have been 3 documents produced, and come in the same folder (...several inaudible words) --

Mr. J. Harris:

But then (...several inaudible words) position locally, why is it not the same place? Everything in fact has an interaction, nothing is in isolation. You need to deal with all those interactions.

Senator B.E. Shenton:

So is GST within them?

Mr. J. Harris:

There is a separate document for GST, but in terms of company taxation and the consequential impacts that it has, GST could be argued not to be a consequence you could take a different (inaudible) decision.

Senator B.E. Shenton:

All I am saying is that you are asking Treasury for permission on things you shouldn't be asking permission on --

Mr. J. Harris:

No, we are not, that is the key point. We are not asking the Treasury for permission. We are presenting the Treasury with a set of circumstances that we are intending to apply in Jersey. They then understand the full picture. They then understand potential areas of controversy, as we said earlier on, there will be one or 2 member states that will say personal taxation should be within the Code so, you know, they will be asking questions of the UK about what are the consequential impacts of Jersey's proposal, and the UK, if it is not in a position to answer them, it is going to say, "We do not know". They are not going to put themselves in that position, they are going to want to know, and they want to make sure that they have lots of contingency in their proposal.

Senator F.H. Walker:

They have got to have confidence that nothing we are doing does, if you like, breach the code. Now there is no suggestions that look-through breaches the code, that is fine, and I do not believe there is any suggestion that RUDL breaches the code, but they have got to have confidence that it does not if they are going to put our case to Ecofin. I mean I think if we go ahead with RUDL at all, which of course as we discussed earlier is a big question, I think the obvious thing for us to do, having informed everybody that it is on our agenda, which I think we had to do, the obvious thing for us to do is do it in a different way, but that is a decision yet to be taken. We are not going on bended knees to the UK Government on things like private or personal tax or RUDL, but we are disclosing fully to them which is absolutely vital if we are going to maintain the high level of trust that exists now. We are disclosing to them all the implications and all the measures and that are proposed as a consequence of adhering to the code.

Senator J.L. Perchard:

Well, I think that just about completes the hearing. Chief Minister, I would like to thank you and John Harris for attending this afternoon, and formally close the hearing.