

**STATEMENT TO BE MADE BY THE CHIEF MINISTER
ON TUESDAY 15th FEBRUARY 2011**

Zero Ten next steps

Sir, Members will be aware of the ongoing review process concerning 0/10. The detailed background to this was set out in a note issued in December last year.

The purpose of this statement is to update Members on this process and to announce measures that the Council of Ministers has taken in response.

Following the EU Code of Conduct Group's evaluation of Jersey's business tax regime, ECOFIN asked the EU Council's High Level Working Party on Tax Issues to review the scope of the Code of Conduct on Business Taxation. The Working Party was asked to complete its review by June.

On 31st of January the High Level Working Party decided that, in their view, the deemed distribution and attribution provisions do fall within the scope of the Code.

It concluded that because shareholders resident in Jersey are taxed on distributions they are deemed to have received, not just on those they have actually received, this measure is not a personal tax anti-avoidance measure but in their view is a way of taxing domestic business profits.

The Working Party's conclusion is set out in its public report to ECOFIN, a copy of which Members have been given today.

The Jersey authorities have made it clear to the Code Group that these provisions are a personal tax measure, and are therefore outside the scope of the Code. This position was not opposed by the UK when, in 2007, Jersey introduced deemed distribution as a personal tax anti-avoidance measure, not a business tax measure.

This is a political and not a judicial process and therefore differences of opinion can arise. In addition, the review did not allow for meaningful dialogue with members of the Code Group or any engagement with the High Level Working Party.

We have asked that if in the future there is any review of our business tax regime, Jersey be invited to participate fully in the discussion. We also plan to discuss with UK Ministers the role of the UK Government in future discussions and how Jersey's interests can be better represented.

Sir, whilst we disagree with the findings of the Working Party and the Code of Conduct Group, the Council of Ministers believes Jersey should maintain its voluntary participation in the work of the Code Group as part of our general "good neighbour" policy with EU Member States.

Accordingly, the Council of Ministers has decided to deal with the concerns raised by the Code Group and High Level Working Party and abolish the deemed distribution and attribution provisions from 1st January, 2012.

The Code Group has been informed of this decision. This, of course, is subject to the agreement of the States Assembly, as legislation will need to be passed.

We believe this puts our tax regime back to the position which ECOFIN approved in 2003 – when it was agreed that the 0/10 concept was acceptable.

This action allows us to retain our 0/10 regime while meeting the concerns of the EU. Maintaining tax neutrality in a simple and transparent way provides stability and certainty for businesses operating here and sends a clear signal that Jersey continues to provide a competitive tax system which will safeguard the Island's future economic well-being.

The Code of Conduct Group is meeting on 17th February to undertake a formal assessment of Jersey's business tax regime as a whole, including the shareholder tax provisions. Now that we have proposed to abolish these provisions, we expect their response to reflect this.

Before the Council of Ministers decided on this action, the States Treasury advised on the impact of such a change on Jersey's tax revenues. They advised that the removal of these provisions would lead to a cash-flow effect from 2013/2014 which in any one year is not expected to exceed £10 million.

We continue to seek an increasingly, constructive, and mutually beneficial relationship with the European Union and we will maintain our commitment to transparency and information exchange according to international standards.

It is evident that tax regimes will evolve over time as international standards develop. Members can be confident though, that as we adapt and remain responsive to the international community - Jersey's essential competitiveness, economic growth and the tax neutrality with 0/10 that sits at its core, will always remain our highest priority.

3. The Chief Minister will make a statement regarding Zero/Ten

3.1 Senator T.A. Le Sueur (The Chief Minister):

Members will be aware of the ongoing review process concerning Zero/Ten. The detailed background to this was set out in a note issued in December last year. The purpose of this statement is to update Members on this process and to announce measures that the Council of Ministers have taken in response. Following the E.U. (European Union) Code of Conduct Group's evaluation of Jersey's business tax regime, Ecofin asked the E.U. Council's high level working party on tax issues to review the scope of the Code of Conduct on business taxation. The working party was asked to complete its review by June 2011. On 31st January, the high level working party decided that in their view, the deemed distribution and attribution provisions do fall within the scope of the code. It concluded that because shareholders resident in Jersey are taxed on distributions they are deemed to have received, not just on those they have received, this measure is not a personal tax anti-avoidance measure, but in their view is a way of taxing domestic profits. The working party's conclusion is set out in this public report to Ecofin, a copy of which Members have been given today. The Jersey authorities have made it clear to the Code Group that these provisions are a personal tax measure and are therefore outside the scope of the code. This position was not opposed by the U.K., when in 2007 Jersey introduced the distribution as a personal anti-avoidance measure, not a business tax measure. So this is a political and not a judicial process, and therefore differences of opinion can arise. In addition, the review did not allow for meaningful dialogue with members of the Code Group or any engagement with the high level working party. We have asked that if in the future there is any review of our business tax regime, Jersey be invited to participate fully in the discussion. We also plan to discuss with U.K. Ministers the role of the U.K. Government in future discussions and how Jersey's interests can be better represented. While we disagree with the findings of the working party and the Code of Conduct Group, the Council of Ministers believes that Jersey should maintain its voluntary participation in the work of the Code Group as part of our general good neighbour policy with the E.U. Member States. Accordingly, the Council of Ministers has decided to deal with the concerns raised by the Code Group and high level working party and abolish the deemed distribution and attribution provisions from 1st January 2012. The Code Group has been informed of this decision. This of course is subject to the agreement of the States Assembly, as legislation will need to be passed. We believe that this puts our tax regime back to the position which Ecofin approved in 2003, when it was agreed that the Zero/Ten concept was acceptable. This action allows us to retain our Zero/Ten regime, while meeting the concerns of the E.U. Maintaining tax neutrality in a simple and transparent way provides stability and certainty for businesses operating here and sends a clear signal that Jersey continues to provide a competitive tax system, which will safeguard the Island's future economic well-being. The Code of Conduct Group is meeting on 17th February to undertake a formal assessment of Jersey's business tax regime as a whole, including the shareholder tax provisions. Now that we have proposed to abolish these provisions, we expect their response to reflect this. Before the Council of Ministers decided on this action, the States Treasury advised on the impact of such a change on Jersey's tax revenues. They advised that the removal of these provisions would lead to a cash flow effect from 2013 or 2014, which in any one year is not expected to exceed £10 million. We continue to seek an increasingly constructive and mutually beneficial relationship with the European Union and we will maintain our commitment to transparency and information exchange according to international standards. It is evident that tax regimes will evolve over time, as international standards develop. Members can be confident though that as we adapt and remain responsive to the international community, Jersey's essential competitiveness, economic growth and of tax neutrality with Zero/Ten at its core will always remain our highest priority.

3.1.1 Deputy G.P. Southern:

Only a fortnight ago, it was estimated that the loss from deemed distribution will be in the range of £10 million to £15 million. Has a new analysis been done since then to come up with a figure of only £10 million?

Senator T.A. Le Sueur:

Yes, we are continually refining our information. It was early days. The deemed distribution provision only came in in 2009. As we find more and more information, we are able to be more and more specific about the likely impact.

3.1.2 Deputy G.P. Southern:

A supplementary, Sir, if I may. Can the Chief Minister confirm that this additional £10 million forms part of a bigger black hole?

Senator T.A. Le Sueur:

No, on the contrary. I said that this was a cash flow issue and it was not a removal of taxation, it was a deferment to a different year. It is a cash flow problem which the Minister for Treasury and Resources is confident and I am confident we can handle quite easily.

3.1.3 Deputy T.M. Pitman:

Part of my question has been answered. However, while disappointed that the Minister did not add an apology into his statement, could I ask, can he assure us that as a result of this even deeper shortfall that will be made up by more redundancies and more impact on the public sector?

Senator T.A. Le Sueur:

No, the Deputy has the wrong end of the stick. There is no point in apologising. We have done nothing to be ashamed of. What we have done is reiterate what has always been our position, that we believe that the Zero/Ten regime was and is acceptable and the correct way forward for Jersey, and that deemed distribution provisions are a small proportion of that, which we can easily get around by different arrangements. There is no need for significant redundancies or any of the scaremongering tactics that the Deputy suggests. This is a simple cash flow issue which easily be managed.

3.1.4 Deputy P.V.F. Le Claire:

This seems to put to an end a period of great uncertainty within Jersey and the position of its tax regime. In the statement, it says: "We believe this puts our tax regime back to the position which Ecofin approved in 2003, when it was agreed that the Zero/Ten concept was acceptable." That clearly states that there was a concept that was approved. Does the Chief Minister not agree with me that it is now time to stop asking questions and disagreeing with the Chief Minister and the Council of Ministers, and now it is time for us all to get behind the Chief Minister and bury our heads in the sand along with them? **[Laughter]**

[11:00]

Senator T.A. Le Sueur:

It was going so well, was it not? There are some people who will never be satisfied with anything that I say, and all I am saying is what we have been saying consistently since Ecofin first commented in 2003, and that is that the Zero/Ten regime is acceptable to them, fits in with the Code of Conduct principles and is stated to be so. It is not a question of putting our heads in the sand. On the contrary, it is holding our heads up high and saying: "Yes, Sir, this is what we believe. This is what is correct."

3.1.5 Deputy M.R. Higgins of St. Helier:

I think the Chief Minister and the rest of the Council of Ministers are in denial. They have said repeatedly that the whole thing was compliant and now we find it was not. Now, I would like to explore this cash flow question. If we are talking about £10 million of income tax coming in, yes, that money comes in, there is a flow of money into the States coffers and the money is then spent on public services and other things, or goods and services. Now, if that £10 million is no longer coming in - and personally, I prefer the £14 million, the original figure they gave us a few weeks ago - how is that money going to be replaced? Are you going to raise G.S.T. (Goods and Services Tax) by another 1 per cent to give you another £15 million? You have to make up that shortfall somewhere.

The Bailiff:

Through the Chair, Deputy.

Deputy M.R. Higgins:

Sorry, yes, through the Chair then. How is the Chief Minister going to make up this deficiency of £10 million?

Senator T.A. Le Sueur:

I have tried to explain to Members this is not a deficiency; this is a cash flow movement. It is not a loss of taxation, it is a payment of taxation in a different period and it is up to the Minister for Treasury and Resources to plan and we can plan quite well for that. As I indicated in my statement, the effect of this will not be felt until 2013 or 2014; that gives us all ample time to plan for a relatively small change of up to £10 million a year.

3.1.6 Deputy M.R. Higgins:

Sir, a supplementary. The Chief Minister said that it is a cash flow problem and yet the whole deemed distribution was an income tax measure under personal taxation. How the heck are you ... sorry, through the Chair. Sorry, Sir. **[Laughter]** Sorry, I am exasperated with it.

The Bailiff:

It is not a question of through the Chair. I do not think the Chair wants to be told to go to anything otherwise, so just "how".

Deputy M.R. Higgins:

All right, Sir. They are going to have to come clean on this. Instead of talking in riddles, come clean and explain where the money is going to come from that you have now lost.

Senator T.A. Le Sueur:

No matter how many times I say it the Deputy does not seem to understand. It is not lost, it is deferred. It is a cash flow issue from one year to a different year. I cannot say clearer than that, so if the Deputy does not believe that then I am afraid there is nothing I can do about it.

3.1.7 Deputy A.E. Jeune:

I thank the Chief Minister for getting this matter put to bed and sorted and I do have one question. Could he tell me, is there any particular reason why they have used the date to abolish of 1st January 2012.

Senator T.A. Le Sueur:

That marks the start of our next fiscal year and it seems sensible to make the change at the end of one fiscal year and before the start of the next year rather than in the middle of a fiscal year, which would cause untold complications to taxpayers.

3.1.8 Senator S.C. Ferguson:

When will the Minister be bringing proposals regarding replacement anti-avoidance schemes to the States, and I assume these proposals will again have to be approved by Ecofin.

Senator T.A. Le Sueur:

I am confident we already have a very good anti-avoidance scheme, which we have had in place for many years now that works very well, and the Comptroller of Income Tax is satisfied with that. If we find that there are subsequent cases of abuse we will address them when the time comes. At the moment I have confidence in our existing tax laws to deal with cases of anti-avoidance.

3.1.9 Senator S.C. Ferguson:

Supplementary, Sir. At what point do the Council of Ministers consider that we say: "Enough is enough. We are a sovereign nation; stop dictating to us"?

Senator T.A. Le Sueur:

Our objective is to be good Europeans and good neighbours and that generally means talking and co-operating and discussing with people. If you get to a situation where those discussions are fruitless and being ignored then we may have to take alternative measures. There is no sign of that at the moment. We have a good constructive discussion and relationship, which I hope will continue for many years to come.

3.1.10 Senator J.L. Perchard:

The Chief Minister concluded his statement by saying Jersey's essential competitiveness, economic growth, and the tax neutrality of Zero/Ten that sits at its core will always remain a high priority. Does the Chief Minister agree that competitiveness, economic growth, and tax neutrality are the reasons why Jersey can provide such high standards of quality healthcare, social services, education and infrastructure? Will he explain to me and to Members and whoever is interested, why it is so important that Jersey is competitive and is able to offer a competitive tax neutral environment?

Senator T.A. Le Sueur:

I think the Senator has virtually answered his own question when he says it enables us to provide all the social services of education and health and so on that the Island expects, and we are, I think, very proud - or I am very proud - of the fact that we have a very competitive economy. We have a very strong, well-regulated finance industry, which enables us to provide high quality services both in education, health and all other areas like that, and we would be in a very weak position, a very poor position were that to be undermined by a lack of competitiveness or by taking actions which would be contrary to the Island's interests.

3.1.11 Deputy J.M. Maçon of St. Saviour:

In a question asked of the Chief Minister on this and other taxation matters, an assurance was given that ongoing conversations with the other Crown Dependencies happened. Were they contacted before this decision was taken by the Council of Ministers, and if not why not? If so, what was their response?

Senator T.A. Le Sueur:

We do have ongoing discussions with the other Crown Dependencies. The response will vary from one to the other. We have to do what is best for our Island and they will do what is best for

their jurisdiction as well. All I can say is that the Isle of Man has taken a very similar approach to what we are doing.

3.1.12 Deputy M. Tadier:

First of all, we all acknowledge the real politic which is having to be engaged in even though we may disagree. My question is to do with the zero rate. Does the Chief Minister think it is fair that owners who are not based in Jersey pay zero tax in Jersey, even though they use the infrastructure expertise of our Island, which is paid for by the Jersey taxpayer, while they contribute nothing to our economy personally?

Senator T.A. Le Sueur:

I think the Deputy may be alluding to some of the issues relating to non-finance companies which have non-resident shareholders in comparison with those in Jersey. That is a matter which the Minister for Treasury and Resources has committed to address in the last budget and will continue to address and deal with in the timescale that he originally put forward.

The Bailiff:

That completes questions to the Chief Minister on that statement. Before we turn to questions I can then inform Members of the result of the ballot for the appointment of the Minister for Housing. The votes cast were as follows: Deputy Green 36 votes, Deputy Southern 15 votes and I therefore declare Deputy Green has been elected as Minister for Housing. **[Approbation]**