

STATES OF JERSEY

Corporate Services Scrutiny Panel Deemed Rent Review

TUESDAY, 17th FEBRUARY 2009

Panel:

Senator S.C. Ferguson (Chairman)
Deputy C.H. Egré of St. Peter (Vice-Chairman)
Connétable D.J. Murphy of Grouville
Deputy T.A. Vallois of St. Saviour
Mr. R. Teather (Panel Adviser)

Witnesses:

Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources)
Mr. M. Campbell (Comptroller of Income Tax)

Present:

Mr. M. Robbins (Scrutiny Officer)

Senator S.C. Ferguson (Chairman):

Welcome to this hearing of the Corporate Services Scrutiny Panel. Before we start, can I bring to your attention the notice about privilege and so on that is on the piece of paper in front of you on the desk.

Mr. M. Campbell (Comptroller of Income Tax):

That will do. [Laughter]

Senator S.C. Ferguson:

For the purposes of the recording we would like to welcome Assistant Minister, Deputy Eddie Noel and Comptroller of Income Tax, Malcolm Campbell. I think you probably know everybody around the table but if you would just like to run round and give your names, for the purposes of the recording.

Connétable D.J. Murphy of Grouville:

Dan Murphy, Constable of Grouville.

Deputy C.H. Egré of St. Peter (Vice-Chairman):

Collin Egré, Deputy of St. Peter.

Mr. R. Teather (Panel Adviser):

Richard Teather, the Panel's technical adviser.

Senator S.C. Ferguson:

Myself, the Chairman.

Mr. M. Robbins (Scrutiny Officer):

Mick Robbins, Scrutiny Officer.

Deputy T.A. Vallois of St. Saviour:

Tracey Vallois, Deputy of St. Saviour.

Senator S.C. Ferguson:

Deemed rental. What is the Draft Income Tax (Amendment No. 32) (Jersey) Law 200- intending to achieve?

Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources):

It is intended to tax at a standard rate of 20 per cent, non-financial, non-Jersey-owned businesses, for example, that may be something like the British Home stores. On a deemed rental charge equal to the market value of the yearly rental that would be achieved from letting a property on an open market value. It will only apply to such non-financial non-Jersey-owned businesses where they owned the property in Jersey, so it will not apply where they have a Jersey landlord which that rental will be taxed on the Jersey landlord.

Senator S.C. Ferguson:

Are you looking at it then as a revenue-raising or an equitable treatment piece of legislation? Is it the perception or is it the money?

Deputy E.J. Noel:

From my own perspective I would view it as a revenue-raising exercise because I believe that it creates an unlevel playing field in terms of a U.K. retail outlet in the Island would be subject to this tax but would not get any tax relief in the U.K. on it if this is a deemed tax and not an actual tax, so that under the Double Tax Treaty they would not get any tax relief on the deemed rental charge.

Mr. R. Teather:

Although they could rearrange ownership.

Deputy E.J. Noel:

They could by substantially rearranging their ownership of the property and there are some issues that we would have to look at.

Mr. M. Campbell:

Could I just say that you do have a point when you say inequity because one of the reasons this has been looked at is because most non-finance non-Jersey-owned companies are on a zero rate of tax under the new regime. Whereas previously they had paid at 20 per cent and some feel it is inequitable that they are still trading in Jersey with their profits in Jersey but paying no tax so there is an inequity angle to this as well, as well as the tax-raising one of course which the Assistant Minister has just said.

The Deputy of St. Peter:

Moving on, and again for the sake of clarity, would you explain how this legislation deals with the vagaries of profit and losses from year to year in relation to the amount of tax payable?

Deputy E.J. Noel:

The way that the proposed legislation is drafted, no deemed rental settlement will be raised on non-financial non-Jersey-owned companies if it makes a trading loss during the period. Furthermore, the amount of the deemed rental charge will be capped at whatever profits that they make. So if they had a deemed rental charge of £100,000 and they only made £90,000 profit then it would be capped at £90,000. Does that answer your question?

Mr. R. Teather:

Just still on the sort of revenue-raising thing; could you talk a bit about why you came up with the estimated yield?

Mr. M. Campbell:

Yes, I can answer that question if the Assistant Minister is happy for it. We did some research at St. Helier Town Hall and we looked at the rentable value that we thought were non-finance non-Jersey-owned businesses and I have the result here. So, we have done some research. We are not saying it is conclusive. We are not saying it is absolutely accurate. Let us say it is a broad-brush approach but we estimate ...

Mr. R. Teather:

So, you looked at specific businesses?

Mr. M. Campbell:

Yes. We estimate and, of course, the St. Helier Town Hall figures, as I understand it, are still based on 2003 rental values. So we estimated broadly based figures of £4 million to £5 million tax revenue would be achieved by this. Very heavy caveats, broad-based and please do not take this as an exact science, it is not an exact figure, but around that ballpark.

The Deputy of St. Peter:

That is just the rental side that is based on 2003?

Mr. M. Campbell:

We understand the St. Helier Parish Hall figures are based on 2003 so, of course, they have probably gone up. Well, actually they might have come back down. **[Laughter]** So, this is why this is a very broad-based exercise.

Senator S.C. Ferguson:

Have you done any work on the collection costs of such a tax?

Mr. M. Campbell:

There will be no additional collection costs as far as income tax is concerned because the account inspectors are currently examining the trading accounts of those non-finance non-Jersey-owned businesses now and charging them tax at 20 per cent, that work will go. It has gone under Zero/Ten. So, this work will replace it if the Minister and the States decide to introduce it. So there will be no additional compliance costs for income tax if this comes in.

The Deputy of St. Peter:

You use the word "if". This is, at the moment, apparently coming forward. How definite is this, this valuation?

Deputy E.J. Noel:

Well, it has to go through the House.

The Deputy of St. Peter:

Yes, I appreciate that.

Deputy E.J. Noel:

We are really looking for guidance from yourselves as well. We will certainly listen to the Scrutiny Panel, whatever you decide whether or not this is for you and listen to your recommendations. The reason being you are a new Scrutiny Panel and effectively the Treasury and Resources fiscal team is new as well.

Mr. R. Teather:

When you did look through the St. Helier records what sort of percentage of these companies were owning their own property and, therefore, being liable for this tax?

Mr. M. Campbell:

Well, that is a very interesting point. I did not know this at the time but it has become apparent to me that some of those properties are not owned by the non-finance non-Jersey-owned companies in question. They have what is called, and forgive me while I just read this, they have a thing called a concessionaire, a Royal Court lease, which means that they have a long, long lease but they are treated as the owner for rates purposes. Now, I have no knowledge of why this exists or what this relates to but it seems that is the case. They do not own the properties but they have very long leases, under a Royal Court lease, which are termed concessionaire leases.

Senator S.C. Ferguson:

That must be over 9 years.

Mr. M. Campbell:

I am not sure.

Senator S.C. Ferguson:

It does not go the Royal Court unless it is over 9 years.

The Deputy of St. Peter:

What is the purpose of it? The question I am asking, and I think you are asking the same question, is what is the purpose of this exercise?

Mr. M. Campbell:

Of the deemed rental?

The Deputy of St. Peter:

No, for this long lease and the way it is being put together, in ...

Mr. M. Campbell:

I am just a simple taxman. I know nothing about rates. **[Laughter]**

Deputy E.J. Noel:

Because if they are paying rent ...

Mr. M. Campbell:

I really have not got a clue.

Deputy E.J. Noel:

... under this lease that we would not get any money from this tax.

Mr. M. Campbell:

The point I made to the Minister at the time was if we are going to introduce this then we would really have to make sure that the legislation covered those kind of people as well, and it indeed it does. The draft legislation does cover those kind of long leases.

Senator S.C. Ferguson:

Are the leases held by a third party? Do they tend to be given by third parties or are they given by another part of the organisation?

Mr. M. Campbell:

Well, they have all kinds of different structures. Some companies have holding companies that hold the property of the leases, and I think Richard mentioned this kind of thing earlier. We really do not know because it is not something we had to look at before. We had this kind of notional Schedule A charge, as the Assistant Minister will know, about 23 years ago and we abolished it because we did not think a notional Schedule A charge was a proper tax provision for a modern tax system. So, we abolished it 23 years ago and here we are again [**Laughter**] looking at a notional deemed rental charge.

Senator S.C. Ferguson:

The old ideas are the best.

Mr. M. Campbell:

I am not going to argue with you.

Senator S.C. Ferguson:

Very wise. Dan?

The Connétable of Grouville:

Well, I was going to come in on the last one and say that we had to rack our brains yesterday when we were meeting here and none of us could think of any substantial business in Jersey, on the retail side, that was Jersey-owned, unless you have got some other ideas but virtually every decent sized business we thought of is not Jersey-owned. You will have to rack your brains as well.

Deputy E.J. Noel:

There is one department store in King Street.

The Deputy of St. Peter:

We have got one oyster fishery. Anyway, that is by the by. How will the law contend with the inequality of businesses with low profit and large rentals paying more tax than those with high profits and low rentals?

Deputy E.J. Noel:

Well, that is covered by showing that a deemed rental assessment is never higher than the actual trading profits made by the non-financial non-Jersey-owned business.

The Connétable of Grouville:

So this is going to be an annual thing, is it?

Deputy E.J. Noel:

Yes.

The Connétable of Grouville:

You are going to look at the trading profits then decide what the deemed rental should be based on the trading profits?

Deputy E.J. Noel:

No, you assess what the deemed rental will be but if that organisation has not made as much profit as a deemed rental then they will be taxed at the low amount.

The Connétable of Grouville:

They would have to appeal against the deemed rental charge, is that correct?

Mr. M. Campbell:

Well, they could either appeal or they could send in the deemed rental valuation and their trading profit statement and we can see if that is lower than a deemed rental for that particular company, and we would assess the lower one. There is no real necessity, I do not think, for an appeal. We could do it in a much cleaner way than that.

Senator S.C. Ferguson:

Why have you slightly complicated the system by saying that they can have allowances against the deemed rental? I think there are interest charges and various other expenses which they can set off against the deemed rental.

Mr. M. Campbell:

Because we have a very comprehensive consultation exercise and the consultation feedback was that this kind of expense should be allowed and we are sensible, rational, caring people so we drafted the law so that those expenses were allowed because people were complaining: “Well, this is not fair. Surely you are going to allow some expenses against this deemed rental charge” and the law allows that.

The Connétable of Grouville:

Can I just quote a paragraph from John Shenton: “Although we have some sympathy with the instant reaction of the Zero/Ten tax proposals are unfair to certain local traders, one cannot ignore that the law, as drafted, would be costly, very easy to avoid, inflationary, administratively difficult and will be unlikely to yield sufficient revenue to justify its introduction.” Can I have your reactions to that?

Deputy E.J. Noel:

Personally I share some sympathy for it.

Mr. M. Campbell:

Well, I do not agree that it is going to be easy to avoid. If you look at the draft law there is a very strong anti-avoidance provision in that draft law. It is very strong indeed. So, I certainly do not agree that it is

going to be easy to avoid. Of course, they may try and wish to avoid it and, no doubt, they will come up with schemes to try and do so and charge their clients accordingly, but there is a very strong anti-avoidance provision in there. Of course, as I mentioned earlier, the yield is uncertain but it is not just the yield, there is the inequity issue which is one of the drivers for this as well. It is a balance, the balance between addressing the inequity and the yield but he is entitled to his opinion, of course.

The Connétable of Grouville:

Absolutely.

Mr. R. Teather:

If you did not allow deductions the yield would be higher and the avoidance would be more difficult.

Mr. M. Campbell:

The yield would certainly be higher if we did not allow deductions, yes, but, of course, they have asked for deductions and if we had not given them deductions they would have been complaining about: “You have gone for consultation and you do not listen”. You cannot win.

Deputy T.A. Vallois:

What mechanism do you have to keep track of Jersey shareholdings?

Deputy E.J. Noel:

The new corporate income tax returns ask for details for more Jersey business shareholders. The new proposed income tax returns also ask Jersey residents for details of any shareholdings that they have in zero-rated companies. Therefore, there is sufficient information coming in to the Comptroller’s department to be able to identify.

Deputy T.A. Vallois:

It is only if they provide the information to you?

Mr. M. Campbell:

Yes, indeed but giving inaccurate or false information on a tax return is an offence and it is liable to a very high monetary fine and now, or now, a prison sentence of up to 15 years in jail.

The Connétable of Grouville:

I think we discussed this last year.

Mr. M. Campbell:

Yes. So, if they want to evade tax they take a major risk because we have, in the last 12 years, prosecuted, I think, 9 people for tax fraud in the Royal Court. They have all been found guilty and given a very substantial monetary fine. So, we do prosecute people for tax, or rather HM Attorney General prosecutes people for tax fraud on my behalf. So, if they do not give the correct information on their tax returns they run a major risk.

Mr. R. Teather:

Also, is there an extent to which this acts as a sort of anti-avoidance thing because if people declare that they are a Jersey resident shareholder and you get them on the deemed distribution, if they do not declare it then you get the company and the deemed rent.

Mr. M. Campbell:

No. No, we have to be very careful here. We do not apply the deemed distribution or the attribution rules to the shareholders of non-Jersey non-finance companies. That is why there is this inequity, because it is zero-rated. If it is a zero-rated Jersey-owned company then we do apply the deemed distribution rules as a personal tax measure to the Jersey resident individual who owns that zero-rate company. So, we are getting the tax through our personal tax measure on our Jersey-owned zero-rate company but not on a zero-rate non-Jersey-owned non-finance company which is where the inequity comes in, which is why we are trying to do this because we are getting tax from them in this way rather

than through the deemed distribution/attribution method. I am sorry, this is all a bit complicated but I hope you are following what I am saying here.

Senator S.C. Ferguson:

We shall have the transcript to look at again too.

The Connétable of Grouville:

At the risk of being sort of misleading or even incorrect, dare I say myself, as I understand it, if we have a deemed rental charge that cannot be offset against U.K. tax, would that come in to the equation, whereas if it is a taxation it can be set off against U.K. taxation?

Deputy E.J. Noel:

It is your question 8 you were talking about. The deemed rental assessment cannot be granted as a tax credit against the U.K. tax of it under the current Double Tax Treaty. To obtain such a credit there has to be an actual rental stream in existence in Jersey and a tax of it has to be on an actual rental income for it to be credited, simply as it is deemed. There is a way for organisations to do it by creating a stream of income through corporate restructuring but there are compliance costs to that and structural costs of doing it.

Mr. R. Teather:

Although it is quite common in the U.K., for retailers to have a separate property company in the UK. So, it is not something that is outside the way that you ...

Deputy E.J. Noel:

No, but if you do not know how they alter structures there may be some ...

Deputy S.C. Ferguson:

It is not an expensive structure to set up anyway, is it?

Deputy E.J. Noel:

Some organisations might think it is, even looking at tight margins. I do not know.

Mr. R. Teather:

Have you had any feedback from either companies or their advisers? Would they bother with the separate company or would they just swallow the tax?

Deputy E.J. Noel:

I do not believe we have had much feedback.

Mr. M. Campbell:

There has been some informal feedback, not written down anywhere. They will either try and avoid it or evade it or whatever, **[Laughter]** or they will try and put in place a structure so that they will make sure it is creditable in the U.K. because eventually it will go back to the U.K. so they want credit for it but if it is a deemed rental charge, as the Assistant Minister was saying, a deemed notional rental charge, the tax on that, that is not going to be creditable in the U.K. So, maybe you could ask the professionals themselves when you see them what they intend to do. I imagine they would but there will be compliance costs.

The Deputy of St. Peter:

Looking carefully at me, how do you know that I am going to push out the next question? **[Laughter]**
The temptation to say question 9 but for clarity I will say would you explain how additional resources to administer this tax are to be found from savings arising from the change to a Zero/Ten corporate tax structure?

Deputy E.J. Noel:

Well, as the Comptroller, I think, has already answered that previously but just to recap. By removing

the Zero/Ten it will free up staff within his department who can then be reallocated to look after ...

The Deputy of St. Peter:

So, we are suggesting there is no additional finance requirements?

Deputy E.J. Noel:

There is no additional finance requirement in terms of from the Comptroller's Department. There will be additional financial requirements on the actual businesses concerned.

The Deputy of St. Peter:

How will you quantify that?

Deputy E.J. Noel:

We cannot.

Mr. R. Teather:

Although, in fact, because of the cap that they will not be taxed on more than ... what would have been their tax on trading profits and their losses who will maybe still do some all-star tax computations but do you think that will just be a small number of businesses or a large number?

Mr. M. Campbell:

Well, bearing in mind we tax at 20 per cent now and we examine our accounts now, we do all the add-backs and have capital allowances computations now, that work has got to go but there will be an additional burden if this comes in but it will be handled by the current staff I have doing the current examination of trading accounts for those non-finance non-Jersey-owned companies. There will not be any additional costs as far as income tax is concerned.

Mr. R. Teather:

Just still on the admin thing, why did you not use the Parish rates valuation rather than this system of making each company get an independent valuation?

Mr. M. Campbell:

Because we had feedback that the Parish rate assessors, or those who administer the Parish rate system, did not really think that was a very good idea. They did not want to mix this tax with what they do in the ratings system. So this is a whole standalone amendment to the Income Tax Law which, every 3 years, the non-finance non-Jersey-owned company would have to go to a chartered surveyor to get an annual rental value ... I mean every 5 years, so there is no huge compliance costs every year. They just simply value the annual rental value and that is it. We do not want to give any additional burdens of work to the rating valuers or the rating system.

The Deputy of St. Peter:

Would they not correlate it together?

The Connétable of Grouville:

No, it would not work because there are aspects to this tax law which they would not be capable of assessing. It just would not work at all, Parish rate assessors work for nothing virtually, and sometimes we give a little something or other which they are taxed on, I might tell you.

Mr. M. Campbell:

Yes, I know, yes.

The Connétable of Grouville:

They are not full-time tax people. They are not full-time collectors and probably some of them would have difficulty getting their heads around a specific situation and I quite agree with the Comptroller that they should not be involved.

Mr. M. Campbell:

That is certainly the feedback we have had and, of course, having had feedback, having gone out for consultation we listen to what the people say. Would you re-amend our proposals?

Senator S.C. Ferguson:

You would like to say that, underlined I think. **[Laughter]** Have you noted that? Dan, I think you are back to question 4.

The Connétable of Grouville:

It is going the backwards live questionnaire. From what evidence is the proposal based to repeal Article 115(g) in the Income Tax (Jersey) Law 1961, U.K. property?

Deputy E.J. Noel:

Well, Article 115, if repealed would be ... it is an immediate tax avoidance device if it is not repealed because it would be relatively easy for these companies to restructure their affairs to put the ownership of that property into a U.K. pension vehicle and, therefore, automatically avoid this tax. That is the driver behind that. It is quite straightforward.

Senator S.C. Ferguson:

But in view of the fact that the people from the property sector are protesting loudly about this, have you sort of waived their submissions in the consultation? Do you think there is any reasonable support for their view?

Deputy E.J. Noel:

It has been hard to judge what level of impact this will have. The information just is not available to find out how many properties throughout the Island are owned by U.K. pension schemes. It is virtually impossible to identify them because the local professionals do not deal with all the people that deal with these properties. They are dealt with by professionals outside the Island so we have not been able to

gather information.

Mr. R. Teather:

Do they not have to apply to the Tax Office for the exemption of the rules?

Mr. M. Campbell:

They have to apply to the Income Tax Office for formal exemption under 115(g) but that is all they have to do. All they have to say is: "We are exempt under the U.K. tax law under this Article of the I.C.T.A. (Income and Corporate Taxes Act). Can you give a similar exemption for 115(g)?" Yes, we do not ask for any information from them.

Mr. R. Teather:

So you do not know what properties.

Mr. M. Campbell:

We have no idea what properties and, of course, bear in mind this exemption goes back probably 40 or 50 years.

The Deputy of St. Peter:

What are your views on that, as a fundamental issue? I just find it a bit difficult to hang my hat on that one. That we do not know who owns properties in Jersey?

Mr. M. Campbell:

Well, income tax does not but, I mean, why would we because it is exempt from tax. We have enough work to be getting on with without bothering about people who are tax exempt. I mean there must be an Royal Court record of people who own property in Jersey.

The Connétable of Grouville:

Would you agree that the complaints we got from the property sector were that if we got rid of 115(g), in other words, the exemption for rental payments or tax on rental payments then it would drive buyers away from the Island. In other words, U.K. pension funds coming in and they will say: “Hold on a minute. We are not going to buy now.”

Deputy E.J. Noel:

It may have an affect on reducing some property prices in the Island.

The Connétable of Grouville:

Yes, but it might also reduce the amount of buyers available.

Deputy E.J. Noel:

That is what I mean. It has the potential of reducing the property prices on predominantly commercial property.

The Connétable of Grouville:

Yes, exactly, but you agree it might have that effect?

Deputy E.J. Noel:

It might have that effect, yes.

Senator S.C. Ferguson:

But I think you have said in a previous hearing perhaps, Malcolm, that the Guernsey and the Isle of Man do not give this exemption.

Mr. M. Campbell:

My understanding is that Guernsey does not give this exemption. That is correct. That is my understanding. I am not absolutely clear about the Isle of Man but certainly Guernsey do not have this

exemption. I am not clear why.

Senator S.C. Ferguson:

The U.K. does not give a reciprocal exemption to Jersey pension.

Mr. M. Campbell:

Well, Chancellor Brown made a major raid on pension funds a long time ago when he abolished the tax credit on all kinds of dividends so the U.K. superannuation funds have had a great big hit. The truth is I do not know the answer to that. I do not know what the U.K. position is currently.

Mr. R. Teather:

But there is no sort of mutual obligation for us to get it in return for an exemption from the U.K.?

Mr. M. Campbell:

I do not think so. I think if the Minister and the Assistant Minister and the States decide to abolish this, 115(g) that is a matter for Jersey. I do not think the U.K. would be too concerned about it. I think they probably have rather more urgent and important issues to be handling at the current time.

Mr. R. Teather:

Would you consider the 115(g) issue separately from the deemed rent issue?

Deputy E.J. Noel:

Personally, I would consider it separately, and I believe that my Minister will also consider it separately.

Deputy T.A. Vallois:

How have you examined the effects that repealing Article 115(g) would have on the Island and what do you anticipate those effects would be?

Deputy E.J. Noel:

There has been consultation to remove 115, both with tax professionals here locally in the Island and via the Fiscal Strategy Group. There was some support for its removal, particularly from the Fiscal Strategy Group and from some professional accountants but there is also opposition to its removal, particularly from the Royal Institute of Chartered Surveyors for the reasons the Constable mentioned before. It would potentially affect property values. We have also sought some economic advice from the Economic Adviser and he was going to be attending today as well but, unfortunately, he is out of the Island. He has spoken with people from the development industry, as others, and there is little economic justification for such relief as it simply serves to inflate commercial property values by having the relief. It means that the pension funds can effectively pay more for the buildings that they buy because they are getting tax relief on it.

Senator S.C. Ferguson:

So that it is deflationary?

Deputy E.J. Noel:

By removing it?

Senator S.C. Ferguson:

By removing it, yes.

Deputy E.J. Noel:

By removing it it has the potential to reduce property prices in the commercial sector.

The Connétable of Grouville:

The way I see it it is a 2-stage affair. Firstly, you are withdrawing willing buyers with money from the market and by doing that you are obviously going to drive the price down.

Senator S.C. Ferguson:

It is questionable whether that is a good thing or not.

The Connétable of Grouville:

But I am not so sure if the mortgagee knows or even the mortgager these days.

Senator S.C. Ferguson:

Do we know the extent of pension fund involvement over here?

Deputy E.J. Noel:

No, that is correct.

Senator S.C. Ferguson:

We have no quantification?

Deputy E.J. Noel:

It is virtually impossible to quantify because there is no record base for it.

Mr. M. Campbell:

Just to add to that, I got in touch with some professionals in Jersey to say: "Can you help us? We are getting statistics together on this" and my recollection is that they said: "I am sorry, Malcolm. We do not deal with those U.K. superannuation funds. They are dealt with by professionals in the U.K." which is natural, which is why, of course, we really cannot get a database together.

The Deputy of St. Peter:

Do you think we should be getting a database together of pension funds that own properties in Jersey?

Deputy E.J. Noel:

It is a bit of a chicken and egg, until you have done it you do not know if it was worth doing or not.

The Deputy of St. Peter:

But do you think there are eggs and baskets involved in this?

Deputy E.J. Noel:

Personally, I do not think it is worth the effort to do it. If it was subsequently done and I was proved wrong then I would be proved wrong, but my gut feeling is that there are more important things that we can do with our time.

Senator S.C. Ferguson:

So, if it is not that important then it is not that detrimental if we repeal it.

Deputy E.J. Noel:

My personal view is that I do not believe that it would be that detrimental to repeal it. But in the present climate it could very well be. **[Laughter]** There could be a short term detrimental effect in doing it.

Mr. R. Teather:

I am just thinking that presumably, normally, when a Jersey tenant pays rent to a U.K. landlord you would get a tax deduction on that?

Mr. M. Campbell:

Yes, indeed. That is Schedule A income. That is Jersey source income. We tax that 20 per cent and we have a new non-resident landlord scheme which the States approved a couple of years ago and that is now live this year so we get 20 per cent tax.

Mr. R. Teather:

So, just as a gut feeling, do you think you are ... because, of course, you would get that tax unless it is a

pension scheme landlord?

Mr. M. Campbell:

Yes.

Mr. R. Teather:

Does that give you any sort of good feeling as to how much the rental stream is taxable and how much of it is ...?

Mr. M. Campbell:

Well, I just give the tax exemption, as the law demands I do, so I do not ask what the rental streams are. There is no point in me asking and they probably would not give it to me anyway. They would say: "Well, under what authority of the tax law are you asking for this information?" because we are tax exempt.

Mr. R. Teather:

But you would know how many properties, even if you do not know what the rent is, you would know that that property is and the like?

Mr. M. Campbell:

Not necessarily, they do not necessarily tell them anything about the property. They just say: "This is who we are. We are a U.K. superannuation fund who have invested in Jersey. We can get exemption from tax in Jersey, give it to us" and they use their U.K. certificate from H.M.R.C. (Her Majesty's Revenue and Customs) which shows they are exempt in the U.K.

Mr. R. Teather:

Do you not check from the Inland Revenue is the rent payment going out to the U.K.?

Mr. M. Campbell:

The accounts inspectors check the trading accounts have come in and they occasionally ask: “Well, who do you pay that rent to?” and, of course, if they are told it is a U.K. superannuation fund and it is called A.B.C. Limited Superannuation Fund and you gave them an exemption from Jersey, tax under 115(g), on 23rd July 1982, we presume they are telling the truth and we do not carry it any further.

Mr. R. Teather:

It is a one-way street.

Mr. M. Campbell:

It is the law.

Senator S.C. Ferguson:

We have always got Article 134B...

Mr. M. Campbell:

134A.

Senator S.C. Ferguson:

Yes. Why is the definition of non-Jersey companies, as stated in paragraph 4 of the proposition relating to the new Article 123C(2B), drafted as it is?

Deputy E.J. Noel:

That is because we are taxing non-finance non-Jersey-owned companies only in the deemed rental charge. They are paying zero per cent rate on all their Jersey trading profits they make whereas zero rate trading and investment holding companies, owned by Jersey residents owners have their deemed distribution/attribution rules applied to the Jersey residents ensuring that the company trading activities are charged at the zero rate and are assessed on a personal basis and, therefore, only these Jersey

residents has a dividend income from the 0 per cent rate of Jersey-owned companies.

Senator S.C. Ferguson:

Why did we go into so much detail? Why did we not just say that non-Jersey companies are those that do not have a majority of Jersey resident individuals as the ultimate shareholders? Why have we done it so complicatedly?

Mr. M. Campbell:

Tax law can be quite complex and, of course, we have to try and capture exactly who it is we want to capture and this draft law was drafted on my instructions by the law draftsman and we believe this is the best way of capturing and identifying exactly who it is we want to capture by this deemed rental charge. It may be a bit complex, and earlier I mentioned there was an anti-avoidance article in the law because people were saying: “Well, we could easily avoid this, Malcolm” so, if we make it simple it may not capture the people we want to capture. If we make it simple they may easily avoid the tax. Hence, it has to be just a tad complex.

The Deputy of St. Peter:

Am I playing with number 10, am I, the last question?

Senator S.C. Ferguson:

We have done 9, have we not? Yes, you are playing with 10.

The Deputy of St. Peter:

Again, I will read it for clarity: “The proposals for this draft legislation was following consultation between the Treasury and Resources Minister and the Corporate Services Scrutiny Panel of the last administration. The Minister and Assistant Ministers, like the panel, are now different. What are your views towards the introduction of this amendment as it now stands?”

Deputy E.J. Noel:

The whole proposition was brought along to try and get an equity basis to it. It probably is in that process of identifying a way of trying to get some equity, there were a lot of frogs kissed, and this is probably really the only potential way forward to attaching ... bringing in some equity. Having said that, I personally do not believe that, at this moment in time, it is worth pursuing as it stands.

The Deputy of St. Peter:

So what is the way forward from now on? If this particular proposition is not worth pursuing as it stands, how are we going to move forward?

Deputy E.J. Noel:

With the caveat at this particular time, I personally do not believe it is the right time to introduce this. It does not mean that there will not be a time in the future when it is fit for purpose. I personally would split out the 2 elements of this, 115 and the deemed rental. I would pursue the 115 first. I do not know if that is the view of my Minister. I suspect it may well be, but I do not for certain. I am very much open to listen to what the Scrutiny Panel ...

The Deputy of St. Peter:

The fundamental difficulty we have, Assistant Minister, is that within Scrutiny we are here, and we have been very clearly told this is our role, to follow up and review policy set by the Executive. As much as I feel working together as a team sort of takes us back into the old committee system which, in certain areas, used to work quite well, we are still in a position now, in the current administrative system, of reviewing what you are bringing forward to us. Now, the feeling I get is that you are not particularly happy - when I say "you" as the Executive - with what is coming forward at the moment in its current style. So, what do you see as the way forward from now?

Deputy E.J. Noel:

I can only really answer that from a personal perspective and I see the way forward for this now is to

park the deemed rental charges and pursue with the 115(g) proposal. That is my own personal view. What I can say is that we are open to the Scrutiny Panel's recommendations. We certainly will take them on board and listen to them carefully but, just to go back, I do not think that this is the right thing to do at this time. Remember, this was originally drafted some 6 months ago.

Mr. M. Campbell:

It was certainly approved 5, 6, 7, 8 months ago and the world has changed.

Senator S.C. Ferguson:

Yes, at the beginning of this session when we asked you what is it going to achieve, you talked about revenue-raising and 2 minutes ago you talked about equity. Can we assume from that you think the equity issue is important?

Deputy E.J. Noel:

The equity issue is important. I personally believe that this throws up as many inequitable questions as it resolves.

Senator S.C. Ferguson:

Like?

Deputy E.J. Noel:

It could have a detrimental effect on inflation in the Island, for example. I personally believe if I was the owner of, for example, British Home Stores and I was hit with this additional tax that I could not get credit for, or not get credit for, without having to reorganise my business, I would have a tendency to want to pass on that actual cost to the end users, i.e. the customers, i.e. the people of Jersey, in terms of higher prices.

Senator S.C. Ferguson:

What else? If you have already been paying, up until recently you have been paying 20 per cent tax or thereabouts, what actual difference is it going to make?

Mr. M. Campbell:

Well, if I can just add, there is a difference because the 20 per cent tax it is currently paying is creditable in the U.K. The deemed rental, if it is a deemed rental tax, would not be creditable in the U.K. so it is a direct cost, additional to ...

Senator S.C. Ferguson:

Is it a fairly simple operation like setting up a property holding company and moving the interest in the property into that company and then it is an allowable charge?

Mr. M. Campbell:

Yes.

Senator S.C. Ferguson:

So that it would still be allowable in the U.K. or wherever?

Mr. M. Campbell:

Yes, we have acknowledged that there are changes to structures that could be implemented which would allow it to be creditable in the U.K. and that is quite correct.

Deputy E.J. Noel:

It would make doing business in Jersey slightly more expensive and, therefore, slightly less practical.

Mr. M. Campbell:

Can I just add another little point here? We have had professionals saying to us: "Look, when we attract business to Jersey those people want to understand what Jersey tax laws are and what they are getting

into.” Probably some of them would not understand this and if you do not understand it: Sorry, we are not going there. We are going somewhere else where we do understand what is going on.” So it is a perception issue as well. There are issues on both sides of the ...

Mr. R. Teather:

By and large, those businesses that are financed that those professionals are trying to attract are not the sort that are going to be caught by this tax.

Mr. M. Campbell:

That is true. It is just a point that was raised by them.

Senator S.C. Ferguson:

Yes, and bearing in mind that some of the U.K. branches over here, or subsidiaries, are, in fact, some of the most profitable in the chains.

Mr. M. Campbell:

They were.

Senator S.C. Ferguson:

Well, they were, yes. I remember British Home Stores before it was taken over. Most of the group profit was made by Jersey but that is back in the dark ages probably before you were even living over here, Malcolm. [Aside] [Laughter] Yes, we have received a proposal this morning that we would like to have a further discussion with you.

Mr. M. Campbell:

Is this with the Minister or with me?

Senator S.C. Ferguson:

Well, with the Executive side of the ... but I think we will have to leave that for another time but we will come back to you on that.

Mr. M. Campbell:

Would you like to give some indication of what it is?

The Connétable of Grouville:

We would have to pass on the proposal.

Senator S.C. Ferguson:

Well, yes, but ...

The Deputy of St. Peter:

For discussion outside of this meeting.

Senator S.C. Ferguson:

Yes, for a private briefing, yes. Do we have any more questions? Dan?

The Connétable of Grouville:

No, I am fine, thanks. I am still unhappy. I must say it is not an area that I am an expert in, in tax, by any means at all as it probably shows in my questions but I just do not see how on earth it is going to work properly and efficiently. That is my view.

The Deputy of St. Peter:

I think my concerns are, echoing that by degree, but the concerns are that you, the Executive, are not over-happy with what you are thinking of bringing forward and are possibly anticipating not bringing it forward. So, from a constructive point of view from Scrutiny's perspective, it leaves us in a rather strange position of what are we actually looking at? Are we looking at something that you are not happy

with and when I write a report saying whatever we are going to say against you telling us that possibly you are not going to push this through as it stands. Have I got that wrong?

Deputy E.J. Noel:

From my own personal perspective you have not got that wrong. I cannot speak for the others.

Senator S.C. Ferguson:

I am concerned that you are, perhaps, relying on us either to damn it or propose it and it is not Scrutiny's job, as Collin has said earlier, to propose alternative policy.

Deputy E.J. Noel:

I agree with you.

Senator S.C. Ferguson:

It is for you to bring the policy forward so that we can examine it and it seems to me that we are having this rather half-hearted attempt to bring new policy forward to us, hoping that we are going to kill it stone dead, which is not what we are here for. I am sorry, Tracey, did you have anything else to ask?

Deputy T.A. Vallois:

I was just wondering, more out of curiosity, whether the alternatives to this have been looked at and, if there are any alternatives, what walls you have hit with them.

Deputy E.J. Noel:

We have been down lots of cul-de-sacs and hit lots of walls.

Deputy T.A. Vallois:

Is there one particular issue that you keep finding that you are hitting on them?

Mr. M. Campbell:

Well, we have to be careful in regards to the Zero/Ten corporate tax regime. A long time ago now, 10 years ago, we came under scrutiny from Europe and the O.E.C.D. (Organisation for Economic Co-operation and Development). We have now abolished what were termed by them, not necessarily agreed by us, as being harmful tax measures, like the Exempt Company and the International Business Company. We have already gotten rid of those now. So, that is why the Zero/Ten system came in. We have also given a commitment to Ecofin that we do not introduce any new harmful tax measures, so we have to be extremely careful what we do in relation to the Zero/Ten corporate tax system. We are confident that this deemed rental proposal is fully compliant. There are no issues, as far as we are concerned, with it in regards to it being a harmful measure but we have, as the Assistant Minister has said, looked at other issues and other avenues. In our view, this is the only one that is, in colloquial terms, a runner. If this one does not run there are no other runners, in our view. I think that is what the Assistant Minister is saying.

The Deputy of St. Peter:

If I am misinterpreting this incorrectly tell me, but from what I can see we have hit the starting blocks and no one is going to pull the trigger to start anything running anyway because we are not happy with the race.

Mr. M. Campbell:

Well, there is no doubt that some individuals, through the consultation process, have come back and said ... some have said: "This is a great idea." Others have said the exact opposite: "This is not a good idea at all" for the reasons we discussed this morning.

The Deputy of St. Peter:

What you are telling us at the moment is that you are uncomfortable with the current proposition as it stands so, therefore, are you going to take this forward in this current format? I think that is a straight direct question? Are you going to take this forward in its current format?

Deputy E.J. Noel:

I am not able to take it forward. Only the Minister can take it forward.

The Deputy of St. Peter:

Well, you know what the next question is.

Deputy E.J. Noel:

I personally would not take it forward in its current format at this time. I think the world has moved.

The Deputy of St. Peter:

That means we are stumped. We are in a bit of a mess. We have to come ... obviously, a decision has to be made by the Executives. It is unusual for me to be in this situation where it is uncertain about what we are looking at is going to come forward anyway. I mean normally you are looking at something fairly concrete. You could assess and advise on but I find this fluffy in the extreme.

Senator S.C. Ferguson:

Plus the fact that if you do not take it forward there is a general perception of the inequity. What are you going to do about it? That was a question.

Deputy E.J. Noel:

No, I agree with you, the perception. **[Laughter]**

Senator S.C. Ferguson:

Do not agree with me. What are you going to do?

Deputy E.J. Noel:

The previous Minister for Treasury and Resources gave an undertaking to support this proposition. It is

up to the current Minister to decide whether or not to proceed.

Senator S.C. Ferguson:

So, you are indicating that there has been a change in policy? I am sorry, I am not trying to put words in your mouth much.

The Deputy of St. Peter:

No, there may be a change in policy.

Deputy E.J. Noel:

I think we will have to agree that there may be a change of policy.

The Deputy of St. Peter:

At what stage will we know what is going to happen, because at the moment we are sort of running round in a circle? At what stage will someone tell us this is going ahead or it is not going ahead in this current format?

Deputy E.J. Noel:

I cannot put a timescale on that but I am certainly lobbying for this to be effective.

The Connétable of Grouville:

Can I just say that I think we should give the Assistant Minister time to get his feet under the table because this is the most complicated and, I think, in some aspects unfair legislation and he should be given time to try and sort it out because he just inherited this. I would not like to inherit this.

Senator S.C. Ferguson:

I am concerned that he attributes a certain degree of importance to the equitable situation and if this does not go through then there are local businesses who are going to be severely disadvantaged by it not

existing. I would just like some sort of confirmation that you are going to do something about it.

Deputy E.J. Noel:

There is a commitment already that has been inherited from the previous Finance Minister, so it is a commitment that will be honoured. Something will be done ...

Senator S.C. Ferguson:

Yes, but how quickly? Have you got some sort of a programme in progress? Have you got timetables on it? Is there a project going on this?

Deputy E.J. Noel:

I cannot answer that because I do not have that information.

Senator S.C. Ferguson:

Would you like to find out and tell us?

Deputy E.J. Noel:

I would love to find out. **[Laughter]**

The Connétable of Grouville:

He is really in the position now where we just chuck the ball pack and he has got the whole Welsh pack 5 yards away ready to pounce. **[Laughter]**

Senator S.C. Ferguson:

Rank has its privileges if you want to join the game. Right, well, if there are no more questions, thank you very much indeed for your time. We will open the cage and let you out.

