

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

**Review of Zero/Ten Design Proposals**

**Friday, 4th August 2006**

**Panel**

Senator J.L. Perchard (Chairman)  
Senator B.E. Shenton  
Deputy P.J.D. Ryan of St. Helier  
Deputy G.P. Southern of St. Helier  
Mr. B. Curtis (Advisor to the Panel)  
Mr. R. Teather (Advisor to the Panel)  
Miss. S. Power (Scrutiny Officer)

**Witnesses**

Senator T.A. Le Sueur (Minister for Treasury and Resources)  
Deputy J.A.N. Le Fondre (Assistant Treasury Minister)  
Mr. M. Campbell (Comptroller of Income Tax)  
Mr. J. Harris (Director, International Finance)  
Mr. D. Peedle (Economic Advisor)

**Senator J.L. Perchard:**

Good morning, everybody, and welcome to the Sub-Panel looking at the Zero/Ten Design Proposal. I think we all know each other, so I will skip the formalities of introduction and welcome you personally, Minister, and perhaps kick off, if I may. I think we have set an hour and a half aside, so we will attempt to use the time wisely. Minister, the Treasury updated its original estimates of the black hole loss as a result of the Zero/Ten tax revenues. Where is the latest update and when can we expect to see the details?

**Senator T.A. Le Sueur (Minister for Treasury and Resources):**

The latest update, I expect you will see the detail in a couple of weeks. Malcolm has done some figures for me updating it. They have been validated both against the original figures in zero giving the earlier calculations, but also in relation to what we decide in the Zero/Ten proposals, because it is a bit of a chicken and egg situation. The way you go into Zero/Ten will have some impact on at least the net value of the black hole element; that I expect to do in the next 2 weeks and then I can let you have full details. At the moment, all I can say is the indications are that we are still talking in the same ballpark figures relating to £100 million, and so as far as the fiscal strategy is concerned, there is no significant

variation from that point of view.

**Senator J.L. Perchard:**

So, the design proposals, as presented now, will be being amended, you suggest?

**Senator T.A. Le Sueur:**

Yes, I think as a result of what submissions I have received over the last 2 or 3 months, once I have gone through them and seen the general feeling about the proposals, I will see whether we need to make any amendments to them, and I would be surprised if there were not some amendments.

**Deputy G.P. Southern of St. Helier:**

You say no significant changes, has there been any loss to the expected revenues because of changes you have made to, for example, look-through, and is that being compensated by a possible potential RUDL charge, or can you give some clues about that?

**Senator T.A. Le Sueur:**

I think it is difficult to give clues. Certainly, the potential loss from companies in the non-financial sector trading in the Island but not owned by local shareholders, that figure has been revised. Now, depending on whether or not we introduce a RUDL charge, although the gross loss from those areas will be the same, the net loss could be different - or would be different - whereas if we introduce the RUDL charge, the net loss would be less than if we do not introduce the RUDL charge.

**Deputy G.P. Southern:**

You are suggesting that there is some change in the figures, a reduction in the figures or increase?

**Senator T.A. Le Sueur:**

Not necessarily a reduction. There could be increases. All I am saying is, overall, we are still talking in the same ballpark region.

**Deputy G.P. Southern:**

But that is fairly widespread. It is £80 to £100 million, 20 per cent error.

**Senator T.A. Le Sueur:**

It is going to be widespread and I think, until we pin down exactly what our final proposal is going to be, it is going to be hard to refine that figure very much more, and even having pinned down our final proposals, they are still dependent on a variety of circumstances. I was just thinking last night, if whoever owns the Grand Hotel now made a bid for Seymour Group, you would move from a hotel company with Jersey shareholders to a hotel company with other shareholders. Conversely, if the

Seymour Group bid for the Grand Hotel, it would be the other way around. Now, those things are totally outside my control and totally outside of any of the forecasts.

**Deputy G.P. Southern:**

Yes. Nobody would expect you take that sort of thing into consideration.

**Senator T.A. Le Sueur:**

No. Given that is one of myriad possibilities, trying to get an absolute spot on figure is absolutely impossible, and to try and pin anyone down to a figure and then say: "You did not get it right. It was £89,300 and not £89,400" would be meaningless.

**Deputy G.P. Southern:**

But nonetheless, you are coming up with an update which you think will be fairly accurate in the next fortnight?

**Senator T.A. Le Sueur:**

We will be coming up with an update in the next couple of weeks.

**Senator J.L. Perchard:**

That will be subject to amendments to the design proposal as presented to date? You will be amending that?

**Senator T.A. Le Sueur:**

I think what we will probably do, from my point of view and from scrutiny's point of view, is to come up with what the gross loss would be and say, in that case, that is the worst possible situation. Now, it could be mitigated by a RUDL charge, it could be mitigated in terms of how you do a tax on distributions and so on, and that would then give you a lower net figure, depending on how much of those things you would use.

**Senator J.L. Perchard:**

But going back to your chicken and egg scenario, that you said you cannot calculate the exact size of the black hole until we know as to what mechanisms we are going to use, whether deferred distribution, whether RUDL (Regulation of Undertakings Development Law), so we are going to have to make a decision that we are going to have to go with the chicken and then calculate after, yes?

**Senator T.A. Le Sueur:**

I am saying in two weeks time - I aim that, within 2 weeks, I would also finalise the way I want to go forward in terms of the outcome of Zero/Ten Design Proposal, and what I might want to do or retain,

what I might want to amend, what I might want to scrap.

**Senator J.L. Perchard:**

So, what is your thinking to date? What are you likely to want to maintain, scrap and amend?

**Senator T.A. Le Sueur:**

They are still very much on the hazy side. I think the one which has caused most controversy, certainly in consultation areas, is that of the RUDL charge. As the Dougie is here, it may be worthwhile that he is able to listen to that as well. Certainly, when we look at the ways of trying to get money back from non-resident shareholders, the advice we got - and which I totally accept - was that whatever mechanism we introduce, it is bound to have a detrimental economic effect on those particular companies, and it is purely a trade-off between whether you want to have economic dis-benefits for the political benefits of maybe being able to score a point off those companies. My thinking, particularly reflected from the views that I have had through the consultation process, is that since part of the fiscal strategy is based on economic growth, it would seem perhaps perverse to introduce a RUDL charge in complexity in that area at the same time as economic growth. On the other hand, this is a design proposal, it is a consultation document, and I think had I not proposed some method of recovering tax from those shareholders, I would be criticised politically by those people who say: "There was a commitment last year to try and find a way out of it and you have done nothing about it." The design proposal proposed what I would call the least unpalatable way out of it, but it is still fairly unpalatable, certainly from an economic point of view.

**Senator J.L. Perchard:**

That is RUDL, Minister. So, there is one area that you have concern about, your original mark 2 design proposal. What other areas are of concern?

**Senator T.A. Le Sueur:**

Before I leave that one, I would say, of course, that if you introduce a RUDL charge, you collect some revenue. If you do not introduce a RUDL charge, you do not collect revenue from that particular area. Now, that effectively means, depending on the size of your deficit, you may need to make it good somewhere else. So, although from an economic benefit point of view, a RUDL charge isn't a particularly good thing, from a purely tax collection point of view it may be - if you do not have a counter-balancing effect - that the RUDL charge puts off businesses, it will collect less tax. It is a balance, at the end of day, which I have to make, but my feeling is leaning towards not introducing a RUDL charge.

**Senator J.L. Perchard:**

If we put aside the other concerns that you may have with the document, and we will return to that later,

perhaps it is appropriate that we discuss RUDL in more detail now and, as I say, I will come back to the other concerns you have about the document. What alternative to RUDL did you look at to achieve the same end?

**Senator T.A. Le Sueur:**

Effectively, the sort of taxes you can introduce to look at those particular groups have to be some sort of tax on employees, on payroll or on property. So, either you do it through the parish rates or some sort of property tax, which can be somehow targeted to those activities, or you do it on an employee basis, either on a payroll or head count, but we looked at all those last year in the original fiscal strategy on the basis of an OXERA document, which I think you may already have in your pack. They all had economic dis-benefit. They all cause distortions and they generally either put up the cost of labour or put up the cost of materials or have some sort of adverse side effect. We felt that this one, the RUDL charge, although slightly complex, would in fact target the objective more closely than anything else, but I do accept that it is a complex and not particularly attractive solution.

**Senator J.L. Perchard:**

Very unpopular as well.

**Senator T.A. Le Sueur:**

Yes, I think it is unpopular, partly because of its complication. I make no bones about it. It is there primarily in response to a political pressure to do something about those shareholders. It may well be, at the end of the day, we say the solution is worse than the cure.

**Senator J.L. Perchard:**

If there were an alternative to RUDL, you would have looked to explore that?

**Senator T.A. Le Sueur:**

Yes. All I can say is we looked around, OXERA looked around, professional advisors around the Island looked around. We cannot come up with a solution which does not have any economic dis-benefits. If somebody else can wave their magic wand and come up with a solution which I have not thought of, then I am here to listen to it.

**Deputy P.J.D. Ryan of St. Helier:**

If I had a magic wand, we would want to wave it now. You are not going to be able to answer this now, but it is probably something that you might want to go away and think about: we have had a suggestion made to us that there is a possibility that, in a similar way to you are proposing to partially exempt the financial sector, you could, on GST (Goods and Services Tax) - so moving completely to GST for a second - you could possibly consider basically stopping non-Jersey owned businesses from reclaiming

100 per cent of their input tax on GST. It would fall outside of the code because you could use it and you can discriminate, using GST basically, on non-Jersey owned businesses. I do not want you to comment on it now.

**Senator J.L. Perchard:**

Well, I do. [Laughter]

**Deputy P.J.D. Ryan:**

Maybe you do, and if you have anything instantly. First of all, have you already considered it?

**Senator T.A. Le Sueur:**

The short answer to that is no, I have not.

**Senator J.L. Perchard:**

You do think there is opportunity with this suggestion?

**Senator T.A. Le Sueur:**

Basically, another reason that I do not like RUDL is because part of my fiscal strategy was to keep life simple and not cause distortions, and I just wonder if we start tinkering with the GST law, to exempt certain companies in certain categories because of certain shareholder situations, whether we are not going to create another elephant here.

**Deputy P.J.D. Ryan:**

That is something you would need to look at.

**Senator T.A. Le Sueur:**

I suspect, again, the complexity may outweigh any benefits.

**Deputy P.J.D. Ryan:**

It might.

**Senator T.A. Le Sueur:**

Again, I do not know if it is either human rights or otherwise legally compliant, so all I can say is I have not looked at it. I can pass it to our advisors to advise me on. It does not, at the moment, particularly appeal to me. It strikes me as complicating a law which is already complicated enough.

**Deputy P.J.D. Ryan:**

Do not say anything that you might want to then withdraw later - because you might change your mind.

At this point we are not asking you to do that.

**Senator T.A. Le Sueur:**

Yes, I will keep an open mind.

**Deputy P.J.D. Ryan:**

Keep an open mind on it. Suffice to say that we have had our own technical advisor look at in some detail to find a reason as to why you could not do it, and to think about how complicated it might be. We fully expected then to have completely thrown it away, and we were going to find something on it: "There is a reason why you cannot do it, and this is it." We have not found that. Our own technical advisor has not found that. So, if we just hand that to you and you do with it as you will.

**Senator B.E. Shenton:**

Can I just read part of the transcript for the suggestion because it might clarify, partly?

**Senator T.A. Le Sueur:**

Yes, please.

**Senator B.E. Shenton:**

These are not my words, obviously. It reads: "Going back to where you were before, about the question you said, was there an alternative to RUDL charge, there probably is. Under the GST proposals for the finance industry, they are effectively exempt and there will be a restriction on their recovery of import tax, because we are allowed to discriminate on indirect tax. You could put a restriction on the amount of recovery which is on a turnover basis and say, 'I am sorry, if your turnover is greater than X million and you are in the retailing sector [for example] then we are going to restrict your recovery to 95 per cent of your input or output.' It is a cost on the business to do. It achieves the same without ringing the individuals. We have spoken to a number of tax people on this and it would actually work."

**Senator T.A. Le Sueur:**

I certainly cannot comment in any great detail on this one. All I would say is my initial thought is that, just like any other solution to this, it has economic consequences, presumably some additional cost burden on those businesses affected, in the same way as --

**Senator B.E. Shenton:**

There would be, yes.

**Senator T.A. Le Sueur:**

The economic dis-benefit argument runs through the GST solution, just as it runs through any other

solution. It may be simpler from an administrative point of view, but I would question that at this stage. It is an alternative which certainly I might look at. I think it would perhaps cause confusion if we try to bring in GST amendments into Zero/Ten proposals in this respect, but certainly, if we can effectively find that as another way of solving the Zero/Ten solution -- all I say is we are moving away a little bit from the original agreed State's fiscal strategy, which was £60 million from taxation; £45 million from GST, £10 million from 20 means 20 and £5 million from ITIS, but if that were the ideal solution certainly I would look at it.

**Deputy P.J.D. Ryan:**

It was you yourself that said it is a fiscal strategy right across the board. I know we are only looking at the Zero/Ten part, but you yourself are on record as saying the whole thing is what matters.

**Senator T.A. Le Sueur:**

Yes, that is right.

**Deputy G.P. Southern:**

While we are here and we are talking alternatives, 2 questions, really: (1) you have always said, I believe, if the black hole turns out to be bigger than we expect, then of course: "I must retain flexibility with GST." That is a possibility still, is it not?

**Senator T.A. Le Sueur:**

It is a possibility. At the moment, I have no indication that the black hole is larger than --

**Deputy G.P. Southern:**

But nonetheless, do you stick by that position?

**Senator T.A. Le Sueur:**

If that were the case, it would be for the States to decide how we raise the extra revenue. One of the options will have to be bringing up GST.

**Deputy G.P. Southern:**

But you have said that that is the position you reserve, to bring it back to the States?

**Senator T.A. Le Sueur:**

Yes, but I also want to make it quite clear that I have no indication whatsoever that the black hole will exceed £100 million.

**Deputy G.P. Southern:**



I am not trying to get you to say that. I am trying to get you to say: "I still have that position, should I need it." Yes. Okay, which then talks about transferring the burden elsewhere, rather than from this particular group. Can I just touch upon one other issue which I have been harping on about with you for the past 18 months now, the possibility of examining land value tax. What progress has been made on that, if you are looking at alternative ways of raising funding? Certainly, property tax is very low in Jersey, historically and traditionally, but is something you could use.

**Senator T.A. Le Sueur:**

Yes. Land value tax is an area which we are not looking at in a great deal of detail at the moment, because fiscal strategy pointed us in a direction of GST and ITIS and also: "Look at other taxes, including environmental taxes and so on" but that was a secondary area outside the main scope of raising £60 million. So, yes, we are looking at that in a secondary area, but we are not looking at it as a means of raising the £60 million that we need to comply with the fiscal strategy.

**Deputy G.P. Southern:**

But again, if you wanted to make this political issue about these people appear to be getting away with something and paying less tax than everybody else, could you also tailor land value tax - it is very flexible - so that local businesses were partially exempt or were charged a lower rate? Again, that is a possibility, is it not?

**Senator T.A. Le Sueur:**

What you are implying there, I think, is that you might have, if you like, a rateable value of one trading operation and a different level from the rateable value of a comparable situation elsewhere, owned by Jersey residents. I suspect that would be a bit difficult to argue how you can rate one property differently from another, simply because it is owned by someone who is not a Jersey resident shareholder. I think we have been trying to solve problems here by creating even worse ones, but also, I think we are in danger of trying to revisit the whole fiscal strategy, rather than (...overspeaking).

**Senator J.L. Perchard:**

Let us go back to the Zero/Ten Design Proposal, albeit you make a very good point. We have a whole host of concerns over RUDL, the Scrutiny Panel. Are you going to drop it from the design proposal?

**Senator T.A. Le Sueur:**

I am 90 per cent certain, yes.

**Senator J.L. Perchard:**

So, do we need to pursue --

**Deputy P.J.D. Ryan:**

Are there any other areas that you have not spoken about, reasons why **[Interruption]** other than what you have already said, complexity and economic dis-benefits? Are there any other reasons?

**Senator T.A. Le Sueur:**

There probably are, if we need any more. That strikes me as being 2 very reasonable ones. The only reason I might want to pursue it, as I say, it does yield a certain amount of revenue and it does solve a political question which some people are asking. I think I have to weigh up and say: "Even if it does solve those 2 problems, could I not find the £5 million or £10 million that we will get from that RUDL charge in a different way?" We would then not be able to solve the political pressure of people who said: "We must do something about those non-resident shareholders." We would have to say, and I think I would be prepared to say, I do not think it is worth the economic dis-benefit, but if some Member wants to bring an amendment to the proposed legislation, the indicative way ahead would still be the RUDL charge as being the least unpalatable option. Even those who oppose the RUDL charge say: "We do not like that. We would not like a payroll tax or anything else any more either" and that would be a political argument. What I am almost certain to do is to drop the RUDL charge from my final proposals.

**Deputy P.J.D. Ryan:**

Are you going to continue with limited trading partnerships?

**Senator T.A. Le Sueur:**

I think that is really a question outside the fiscal strategy. I think I might well recommend that to the Economic Development Minister as a useful vehicle for the Island to have in its armoury of companies and trusts and so on.

**Deputy P.J.D. Ryan:**

Because there is a thought that it would be useful in other areas.

**Senator T.A. Le Sueur:**

I think it would. That would be outside the core Zero/Ten situation. It would be a stand-alone proposal, which I think still has a lot of merit.

**Deputy P.J.D. Ryan:**

Yes. I mean, because one of the side benefits of the RUDL charge is that it would have politically put pressure on to bring the limited trading partnership law up to speed, and it would be a shame to lose that, in many ways.

**Senator T.A. Le Sueur:**

Yes. They have a limited partnership law available already. It may well be we just need to revise that and treat that from an economic development point of view and financial services point of view, but not necessarily as an essential adjunct to a RUDL charge.

**Senator J.L. Perchard:**

How important, Minister, is it to have an alternative to the RUDL?

**Senator T.A. Le Sueur:**

That is a purely political question.

**Senator J.L. Perchard:**

Is it purely political? It is claimed that Jersey-owned businesses will not be disadvantaged because UK-owned businesses will pay tax at 30 per cent, but will they? Will they really take their 30 per cent profits to the UK and pay tax on them?

**Senator T.A. Le Sueur:**

I certainly cannot speak for every company and every situation. All I can say is that whether they do or do not, the effect of a RUDL charge on their local operations would be an economic dis-benefit. Whatever situation they are in now, I am assuming that they are paying 20 per cent in Jersey and the balance in the UK at the moment. If they have alternate structures in place at the present time which makes their effective rate less than 30 per cent, those structures will still be in place whatever the effective rate is in Jersey. So, it does not alter their situation. Any charge, like a RUDL charge or a payroll tax or a property tax, will have an economic effect on their present situation, whatever their effective international rate, if you like, is.

**Senator J.L. Perchard:**

Yes. The concern that we have is that Jersey-owned businesses may be competitively disadvantaged if we do not have a form of RUDL charge, because there is a real concern that 30 per cent that UK trade companies in Jersey may be liable to pay will be rolled up and given out in loans and they will not be paying any tax in the UK.

**Deputy P.J.D. Ryan:**

Or any more than they are currently.

**Senator T.A. Le Sueur:**

As I say, whatever their current structure is, I presume that they will continue their current structure. I do not see that this necessarily has an additional dis-benefit.

**Senator J.L. Perchard:**

Going from 20 per cent to 30 per cent is one thing, but a third of their profits effectively, they will have an opportunity to roll it up and extend it to the Zones or investment, and Jersey businesses could, without a form of RUDL, be competitively disadvantaged, surely?

**Senator T.A. Le Sueur:**

I think you need to go through the paper which Dougie has sent you. It depends what the effect of a RUDL charge is going to be. Is it going to be that the price of goods is going to go up? Is that price going to feed through into the rest of the market? I think maybe it is a question here I would pass over to Dougie to comment on.

**Deputy P.J.D. Ryan:**

I think it has been suggested that what might happen is that a UK-owned group would continue to pay the same actual amount of pounds in tax to the UK to keep the UK Treasury happy, but would roll up the profits in Jersey and then back-finance other parts of the group, either in the UK or in other parts of the world and therefore, you could get a situation where --

**Senator J.L. Perchard:**

No, they would not have to pay any UK tax. Their profits in Jersey --

**Deputy P.J.D. Ryan:**

But it has been suggested that they would continue to pay whatever they are currently paying [Interruption] and the UK Treasury would be reasonably happy.

**Senator T.A. Le Sueur:**

Let John come in here.

**Mr. J. Harris (Director, International Finance):**

I agree that theoretically that is absolutely right, that they have an opportunity, but first of all, I think there is a question of whether you want to maintain an open trading economy or whether you want to have, in effect, a protectionist-type, closed economy. So, there is an economic point I am sure Dougie would want to comment on there, but assuming you want to keep an open trading economy, that is a risk you are going to be exposed to. If you are exposed to it to any great degree, you would tend to find it in fairly sophisticated multi-national style organisations, whereas many of the traders, such as we are talking about in this context that operate on the Island, tend to be retailers, for example, and in some cases, branches of UK corporations. So, there is a straight, transparent fiscal situation there where you look-through to the branch, it is part of the UK plc and the profits are aggregated anyway. Boots is a very good example. I would accept that if there is an operation here which has, for example, an

American subsidiary, you can mix the profits of an American subsidiary with the Jersey subsidiary, and it ultimately reduces your UK corporation tax liability that way, but you are not going to find an awful lot of those type of operations outside the financial services sector in Jersey, because you do not really have them. They are relatively small size operations.

**Deputy G.P. Southern:**

Can I come in there? It has been suggested by several people to us that the existence of the dual band Zero/Ten will increase the appetite, shall we put it that way, for tax avoidance. What is your position on that? What have you built into your calculations in terms of people will alter the structure of their business to avoid paying tax?

**Senator T.A. Le Sueur:**

Are we talking about tax avoidance by Jersey residents?

**Deputy G.P. Southern:**

That is right, Jersey residents, by companies inside, and on the border of the Zero and Ten.

**Senator T.A. Le Sueur:**

That strikes me as about 3 or 4 questions rolled into one there.

**Deputy G.P. Southern:**

Just try one of them. [Laughter]

**Senator T.A. Le Sueur:**

Yes, I think these Zero/Ten proposals will increase the possibility of Jersey resident shareholders trying to find ways of avoiding having the tax element transferred to their personal shareholder as an individual, and part of the Zero/Ten proposals involve looking at strengthening the anti-avoidance procedures in order to ensure that that does not occur. I think it is a risk. It is almost an inevitable consequence of a more complicated tax structure, that you have a greater likelihood of people seeking ways to avoid it. As far as the people on the fringe between Zero and Ten, we are talking about financial institutions here with a mix of activities. I think, yes, they will obviously try to structure their affairs in the most effective way. John, you might want to come in.

**Mr. J. Harris:**

There is a specific proposal in the document to try and treat them as a specified financial services group, so they might get away from the idea that they can effectively download some activities into non-regulated activities and therefore avoid the 10 per cent, but nevertheless, these are multinational organisations and I go back to the point just made, that they have a lot of tax planning capability, and

that is a risk that you are going to be exposed to, to some extent. The bet that is basically being placed here is that the 10 per cent rate of taxation for the financial services group is competitive and that there is therefore no great incentive for them to do that, because that is a rate of tax that is comparable to similar rates that they can enjoy in other jurisdictions. We know who they are: the Isle of Man, Singapore and so on. So, you are trying to pitch the rate of tax at one which effectively does not provide a great incentive for people to try and organise their way out of it, because it is not worth the cost and the complexity of doing it and ultimately, whether you pitch it at 10 per cent or 7 per cent or 12 per cent or whatever, you know, you are going to have a risk that you have to accept, I think, in the long run. It is about finding the right rate and the right balance and the right competitive sort of a response to the environment.

**Senator J.L. Perchard:**

The panel is quite concerned about the opportunity with the new proposal for avoidance, really, and I wondered if it would be appropriate - and with your permission, Minister - whether we turn the tapes off temporarily, take a five minute comfort break and allow Richard to talk informally about his concerns. Would you be happy to do that?

**Senator T.A. Le Sueur:**

Yes, quite happy.

**A SHORT ADJOURNMENT**

**Senator J.L. Perchard:**

Do you want to just carry on?

**Deputy P.J.D. Ryan:**

Really, to sum up the question I want to put to you is this whole question of whether UK-owned Jersey trading businesses might present an opportunity for a commercial opportunity under the current proposals which would have distortionary effects, maybe either locally or in UK businesses. This is a complex subject, I am well aware of that, and it may be that you might want to give a written reply at a later date on this kind of question and this whole area, Minister.

**Senator T.A. Le Sueur:**

I think we have to accept that there may be a slightly increased possibility of the attractiveness of Jersey to those sort of businesses. I think it is relatively small, frankly insignificant to the whole proposal we are talking about here, because Jersey is a relatively small market to a multi-national or even a national company. I am happy to send you a more formal submission in that respect, but certainly, that is my overall view. People invest in subsidiaries for a variety of reasons, but it is generally that they think

they are going to make a nice profit out of doing so.

**Deputy G.P. Southern:**

Can I just say that the relative size of the Jersey economy compared to the world market, it is obviously small. Nonetheless, there is one area in which we might see some problems of the institution of zero tax and that is in the realm of e-commerce. We have already, we're just coming to the end of a study on fulfilment but, for example, we have an international which is a significant mover in that particular market, and that market is going to expand. Now, should that company decide to sell out or float itself on the public, we start to have a problem, I think, because we lose significant tax revenues immediately.

**Senator T.A. Le Sueur:**

That is certainly a possibility which we have to bear in mind. I do not know that any proposals that we come up with in respect of Zero/Ten are necessarily going to stop the likelihood of those sort of businesses being targets for other purchasers.

**Deputy G.P. Southern:**

But Zero/Ten gives us a fiscal problem should that happen, does it not? It is inherent to Zero/Ten.

**Senator T.A. Le Sueur:**

It is inherent that if businesses which are currently owned by Jersey shareholders get owned by non-resident shareholders, the tax yield must go down. That is inevitable.

**Deputy P.J.D. Ryan:**

Were that to happen, would the tax yield be replaced because, presumably, those current Jersey business owners would receive value for their shares in those and then would invest that money and presumably pay more personal tax? Is that right?

**Senator T.A. Le Sueur:**

That is certainly a possibility. I think all I would do at the moment is agree with Deputy Southern that there is the likelihood at first level that the tax revenue would go down. At the secondary level, it may well be that the capital that they received, if they invested it in Jersey, will increase the personal tax yield. Whether it is the equivalent amount, I would not say.

**Deputy G.P. Southern:**

Which takes me onto my next question, which is one of the arguments used against capital gains tax, is that it is complex. If you are building a situation like we are under Zero/Ten, which is incredibly complex, then I think that argument against capital gains tax, which is the simplest way of avoiding paying taxation for an individual, the introduction of capital gains tax then becomes perhaps worthwhile

to look at as the simplest way of stopping this sort of tax avoidance. Has your position changed on capital gains tax?

**Senator T.A. Le Sueur:**

No, my position has not changed at all on capital gains tax. I think, first of all, it is not tax avoidance if a Jersey shareholder of a Jersey trading operation decides to sell that operation to somebody else and collects the proceeds. That is something which is fine. If he then reinvests those proceeds in a Jersey business or a Jersey bank account or investment, we will collect the ongoing revenue stream from that income. If he sticks it all into a roll-up fund, then I am sure the Comptroller of Income Tax will want to come up, partially under Article 134A, and say that is a misuse of all their capital. I do not see that the situation you are talking about requires the complexity or the solution of capital gains tax at all. I do not see that it has a great deal of relevance in the present context.

**Senator J.L. Perchard:**

Minister, do you feel there is now, under these proposals, an opportunity for perhaps unattractive business for Jersey to invest here with the opportunity of them to not pay their UK tax? Do you think that we could be attracting undesirable business? Is there an opportunity here? Is there a window?

**Senator T.A. Le Sueur:**

I would not have thought so particularly. Would you like to be more specific on what sort of businesses? Given that we have virtually no unemployment, given that we have fairly high labour costs and property costs, what sort of business is going to suddenly be attracted to Jersey?

**Senator J.L. Perchard:**

Well, UK businesses that will not be paying any tax to the UK exchequer, and so that --

**Senator T.A. Le Sueur:**

Why will they not be paying to the UK exchequer?

**Senator J.L. Perchard:**

Because they will have the opportunity to avoid paying that 30 per cent by rolling up or purchasing investments. What sort of business particularly are we talking about?

**Senator T.A. Le Sueur:**

I think it is rather fanciful to expect that we are going to have huge boatloads of investors coming from over from the UK, simply because they suddenly think: "Oh, here is a chance to generate profits and the UK revenue will not know anything about them."



**Mr. J. Harris:**

There is another level of screening in that respect, in that any business that operates here needs a RUDL and that really is about economic criteria being applied at the point of entry. Are you going to generate local employment capabilities? What is your profit for employee ratio going to look like? What is your background? What opportunities do we have to check you out? They all arise at that point, so there is a sort of built in screening process here as to try and catch a business, which effectively what you are describing, if I understand you correctly, is a sham; basically saying: “We are exporting the plant, machinery, capital, intellectual sale of property rights [you name it] from the UK to Jersey purely for a tax avoidance situation.”

**Deputy P.J.D. Ryan:**

Would not JFSC (Jersey Financial Services Commission) also have a third screening?

**Mr. J. Harris:**

It depends on the nature of the activity. If it was financial services, yes, because they need a proper test, but if it is outside financial services then they do not get involved.

**Deputy P.J.D. Ryan:**

Don't they also control the incorporation of new businesses though?

**Mr. J. Harris:**

Well, they have a requirement for the beneficial owner to be disclosed.

**Deputy P.J.D. Ryan:**

Beneficial ownership. KYC (Know Your Client) there, is it not?

**Mr. J. Harris:**

Yes. So, the basic control is the set up of a business which must have an RUDL licence. I think there is a growing realisation, irrespective of Zero/Ten, that at RUDL level there needs to be a greater level of vigilance exercised on people who want to come and set up on the Island, because that is just a standard procedure. It ought to be standard operating procedure, basically. Anybody applying here ought to have their motives looked at.

**Senator J.L. Perchard:**

Can we just wrap up here with RUDL? We are still here in a sense because we are talking about competitive advantage as a result of being non-locally owned, and the Chief Minister said that RUDL is politically driven rather than economically driven. We have our doubts about that statement. It is politically driven, of course, but is it not economically driven, and if we are going to scrap RUDL, is it

not imperative that we find an alternative mechanism to create equity?

**Senator T.A. Le Sueur:**

What do you mean by equity?

**Senator J.L. Perchard:**

Equity between locally owned and non-locally owned business.

**Deputy G.P. Southern:**

Getting some tax out of them, some charge out of them.

**Mr. J. Harris:**

If you are looking to get some tax out of them, you can only do that at corporate level. There is equity in terms of shareholders, because shareholders are resident here. They pay resident taxes here. Non-Jersey owned businesses have shareholders who are resident somewhere else and basically pay their taxes there, and that is a feature of the open trading system in which we, presumably, want to be part. I do not know whether you might want to challenge that statement, whether we do want to create a protectionist barriers-up type of economy here. The Economic Advisor might have some views on that I think you might want to ask him about, but there is a real policy choice there.

**Senator T.A. Le Sueur:**

It strikes me if you are going to have an economic growth policy as part of your fiscal strategy, then protectionism is necessarily going to be entirely avoidable.

**Deputy G.P. Southern:**

But effectively, that is what we have done in the e-commerce sector at the moment. We have introduced something which is very protectionist.

**Senator T.A. Le Sueur:**

You are on the fringe there.

**Mr. J. Harris:**

They are different pressures, are they not?

**Deputy G.P. Southern:**

Indeed, and that is for another occasion, for another report. Can I take us on? I will try and focus, and again, it might get complex, but let us see it. What we are talking about, that thing, one of the ways to avoid tax, is it not likely that Jersey shareholders will superimpose non-Jersey structures between

themselves and their companies, especially for new businesses and investments? Jersey Finance themselves, in their report, in their comments, have pointed this out, you know, a trust mechanism or whatever which avoids tax paying. Is that a possibility? Is that something you have considered?

**Senator T.A. Le Sueur:**

It is a possibility, and something that we will need to make sure that the compliance and the anti-avoidance procedures are adequate to cope with it.

**Deputy G.P. Southern:**

Now, that comes down to this next question. Does the comptroller have access to the necessary information to determine who are the real ultimate shareholders of a Jersey company, if the shareholders are held, say, by a Guernsey company or a Cayman trust? Can we get to that or, again, will that be a loss?

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

The draft law which is currently with Her Majesty's Attorney General for Human Rights Issues does contain a provision which will allow me to find out who the ultimate beneficial owner is of a particular company. Even if they superimpose a structure on top of it, the law will allow me to go behind that veil, and the taxpayer himself, the Jersey resident, must declare his beneficial ownership in the company to me.

**Deputy G.P. Southern:**

Even if that is a trust?

**Mr. M. Campbell:**

Yes.

**Deputy G.P. Southern:**

You say that is before the UK AG (Attorney General)?

**Mr. M. Campbell:**

No. **[Interruption]** No, the Jersey Attorney General.

**Deputy G.P. Southern:**

To see if it is human rights compliant?

**Mr. M. Campbell:**

Yes.

**Deputy G.P. Southern:**

So, there are obviously questions about that, because they sound like very draconian powers invested in you.

**Mr. M. Campbell:**

We have to ensure that we tackle tax evasion and tax avoidance. We tackle tax evasion and tax avoidance now. With Zero/Ten, we have to have provisions to ensure that Jersey resident individuals do not have a zero rate Guernsey company which I do not know about, and that is why the tick the box regime and the suggestion for the capital contributions to be declared with the tax returns. But the reason it is with the AG, the draft law, to have a look at, that is standard procedure. It is not just for this particular provision. It is to look at the whole of the draft law.

**Deputy G.P. Southern:**

With powers like that, one wonders that one can avoid any tax, anyway. They are very powerful weapons.

**Senator T.A. Le Sueur:**

I think you have to sort of (...inaudible) if you like, here. If you have a tick the box situation requiring Jersey individuals to declare when they have put cash into an overseas trust or company, and conversely, if they do not put cash into an overseas trust or company they just do not put a tick in the box. If they file a wrong declaration in that box, then they are potentially guilty of tax evasion.

**Senator J.L. Perchard:**

How can you find out if it is a Cayman trust and a Jersey business has its ownership there, trading in Jersey and does not tick the box?

**Mr. M. Campbell:**

In democracies, tax systems rely on the honesty of the taxpayer. That is a very basic proposition. We rely on the honesty of taxpayers to make correct returns to the Inland Revenue or to the Comptroller of Income Tax. That will still be the case, but if someone is absolutely determined to evade tax and not declare it to the appropriate revenue authority, people can do that and they do do that. We can only devote so many resources to compliance and investigations, because our primary role is to collect £370 million of tax revenues every year, but we will do compliance. We will do investigations, but if someone is absolutely determined to evade tax, they can do so.

**Senator B.E. Shenton:**

Can I just ask what are the manpower implications for your department? What are the costs of bringing

any staff on for compliance, for processes?

**Mr. M. Campbell:**

What I intend to do is to shift some current resources from the accounts inspection role which they currently do, because if the proposals go through as they stand, there will not be a need for account inspection any more and add-backs under the tax law. So, those resources which I currently have will be shifted into compliance and investigations. So, there will be no additional manpower resources.

**Senator T.A. Le Sueur:**

I think you also have to understand that, if you like, tax inspectors have had a fair bit of experience over the years, not just in Jersey, but worldwide.

**Deputy G.P. Southern:**

Oh, the old tax inspector's nose.

**Senator T.A. Le Sueur:**

Yes, but if a person goes off every weekend in his yacht and shows income of £5,000 a year, the tax inspector, wherever he is, tends to get a bit suspicious.

**Deputy G.P. Southern:**

Sure, but bringing it back to the central question of your estimates, you are not building in a great deal, it seems to me, for avoidance. You are saying that the system will run as it does now. How much are you building in for avoidance?

**Senator T.A. Le Sueur:**

I think we are going to need to look at the tax loss at a corporate level from the change to Zero/Ten.

**Deputy G.P. Southern:**

But as soon as you go to Jersey residents, you are talking about the difference between zero per cent and 20 per cent, and you have just put a big motivator in there for people to try and avoid, because 20 per cent/20 per cent does not matter, but zero per cent/20 per cent perhaps does to someone.

**Mr. J. Harris:**

No, simply to say that you are right, that this all depends on how much you claw back under the zero proposal from whichever way you go, whether deemed distribution, actual distribution, and those are 2 possible different outcomes. So, Malcolm will back me up in this. I think we took a very cautious view of what might be clawed back in coming up with the iterations right the way through the process thus far, and I am sure that will continue with the latest set that is being looked at now. You could take a

worst case view - Terry made a difference between a gross and a net loss, the worst case here would be in the order of whatever it was, £30 million or £35 million, and then I think that in the original iteration of £80 million to £100 million, the claw back from that was relatively small. A lot depends on whether you go to a deemed or an actual distribution, because deemed, you would probably have a higher degree of certainty of return; actual distribution depends on behaviour, of which avoidance is one aspect, but another part of the behavioural issue is, of course, whether people take profits out of the company and enjoy them or whether they leave them in there. So, it is a very difficult exercise to do, but we have been cautious.

**Senator J.L. Perchard:**

That conveniently brings us on to the big chestnut of deemed or actual distribution, which is causing a lot of controversy locally and is causing a lot of head scratching within the Isle of Man and Guernsey, as you know. You have chosen, or are proposing a deemed distribution charge. Are you content, going back to where we started, that there are a couple of areas within the design proposal that you are uneasy about? Is this another area?

**Senator T.A. Le Sueur:**

Yes, it is certainly an area which I am looking at and looking also at what is happening, primarily in Guernsey and the Isle of Man, and I was interested to see that the Isle of Man proposals originally received Royal assent. It may well be that, in the light of that, I will need to take stock, if you like, before I come up with a final proposal on which way we go in terms of collecting from those shareholders. I must say I would be quite attracted to the Isle of Man route if I thought it was EU Code compliant.

**Senator J.L. Perchard:**

That is now with ECOFIN (The Council of Economics and Finance Ministers of the European Union). When do we expect them to give a ruling or an opinion?

**Senator T.A. Le Sueur:**

I have no idea of ECOFIN's timetable. I think the likelihood is going to be at the end of this year. John?

**Mr. J. Harris:**

End of this year.

**Senator J.L. Perchard:**

So, would it not be prudent, Minister, to hold back from the 24th October - the agreed dates for taking Zero/Ten to the States - until we have understood the ruling on the EU from the UK ministers?

**Senator T.A. Le Sueur:**

It may well be. I think at this stage, I would still prefer to take the principles to the States in October, bearing in mind that we still have to convert that into a law and there is time between bringing those principles and bringing in the law. I think this is something which is certainly exercising my mind at the moment, because I agree that it would be nice to sit and wait until we had the clarity from the EU on the Isle of Man situation before we went too far down one direction. On the other hand, I do know that businesses would like certainty as far ahead as they possibly can, and from that point of view, I would like to make an earlier decision. It may well be that if in fact we can get the answer to the EU/Isle of Man situation by the end of the year, I would be prepared to wait another couple of months, but you start going down this critical path because you have the date. We have to have everything in place by June 2008, and you work back from that and say: "How far down the line can you leave it before you make a final decision?" It may well be that another couple of months would not be critical from that point of view. I think from the commercial advantage point of view, if people know which way Jersey is going, it makes life a lot easier for them to plan. I have always tried to plan early and get things in advance, get things up as early as possible. I think the way I am thinking at the moment, I would be quite attracted to the Isle of Man type solution. It may well be that I suggest - with your approval, no doubt - we would defer that discussion until there was the certainty. I mean, your first question to me was when was the EU (European Union) going to make up its mind? If it makes up its mind by the end of the year, that is fine. We can debate all these principles in January. If the EU decides it is one of those things they want to scratch and discuss it in 6 months' time and they leave until the following June, that then gives me a problem, because I do not think I can realistically wait that long.

**Mr. J. Harris:**

Similar circumstances arose with Malta, which is EU member state, and so they have State aids issues behind it as well. So, they had the legal mechanism to enforce things as well, and it still took 2 years for the EU simply to analyse what they were proposing to do. They came back for several different discussions, and the co-group only meets every 3 or 4 months. So, if they decide they want to scratch their heads, it could be a very, very lengthy procedure.

**Deputy G.P. Southern:**

It is not strictly a legalistic procedure. It is a political procedure.

**Mr. J. Harris:**

For us, no, but Malta was slightly different, because they are a member state and so they are subject to rules behind the code. The code process is (...several inaudible words).

**Senator B.E. Shenton:**

But what happens if you miss the deadline?

**Mr. J. Harris:**

We have not met our international commitment. We made a commitment.

**Senator B.E. Shenton:**

If ECOFIN....

**Deputy G.P. Southern:**

I think the point is it is up to us to put our proposals to the UK government so that they can put it to ECOFIN and say: "Are we in the clear?"

**Senator J.L. Perchard:**

There is a deadline, did you say?

**Mr. J. Harris:**

3rd June 2008. What we negotiated was we would have 5 years to put together the proposals for a change in the tax system to deal with the issue of exempt companies, which is the principle problem that they were concerned with, and we worded it so that it is was 5 years from agreement with the EU on the tax package which took place at ECOFIN on 3rd June 2003. So our drop-dead date, if you like, is 3rd June 2008.

**Senator J.L. Perchard:**

Could you just outline, as you see them, the differences between the Isle of Man proposal and our proposal currently?

**Senator T.A. Le Sueur:**

Basically, the Isle of Man is giving an acceptable distribution rate of 55 per cent. Now, if companies distribute a higher dividend than that, then the shareholder gets assessed on that dividend and that is fine. Equally, if it is an investment holding company, I think the acceptable distribution rate there is 100 per cent. Equally, I would say that there would be some flexibility that if there were particular companies with a particular distribution requirement, it might be that that 55 per cent rate could be varied in those circumstances as well. But there is an implication that the majority of profits, even if it is only 55 per cent, will get distributed to shareholders, and that, I think, is a reasonable situation. If you like, it is in the same sort of principle as we were looking at with our deemed distribution, saying if you wanted to wait, you do not have to distribute it all in year one, but it will catch up with you sooner or later. The Isle of Man version is simpler. It may well be more palatable from a commercial point of view. It does, from my point of view, again reduce my potential yield, because we could be talking



about 55 per cent ongoing, rather than if you are catching up to 100 per cent, but it is only for those companies in the non-finance, non-investment holdings sector. So, again, we are talking about maybe a relatively small proportion of the whole overall yield. It will, nevertheless, have an effect on yield. It is a balance which I have to strike between simplicity, which I like; yield, which I need; being code compliant, which goes without saying, effectively. All this needs to be put into the balance, but certainly I would be attracted to the situation. Well, I am sure we all have the Jersey proposals to have effectively a deferment, if you want, of up to 3 years with the roll-up and with a charge, and then collecting them thereafter, or I could go back to the original idea of total attribution, which is, if you like, at the other end of the spectrum.

**Senator J.L. Perchard:**

We are going to come on to that in a minute, but that part of the Isle of Man proposals probably will have no problem with the EU code, would you agree with that? It is the other part of the company acting as the agent.

**Senator T.A. Le Sueur:**

Yes.

**Mr. J. Harris:**

That is the issue.

**Senator J.L. Perchard:**

What is your opinion on that?

**Mr. M. Campbell:**

Well, I have looked at what the Isle of Man have legislated for, and it seems to me, looking at it, that there may well be a chance of it not being code compliant, because they are still assessing the company on the company profits. There is another issue which the Isle of Man also legislated for: they can allow the company to elect to pay a 10 per cent tax rate rather than have the distributable profits charge. Again, it seems to me that that may very well not be code compliant either, if they are allowed to elect to pay tax for their profits at 10 per cent rather than pay this charge. We will just have to wait and see what the view is in ECOFIN.

**Senator T.A. Le Sueur:**

I produced our more complicated proposals on the assumption that a company acting as an agent would not meet -- I thought, in fact, it would even get a slap on the wrist from UK Treasury, but it did not. I suppose from a domestic point of view, the Privy Council will say: "That is the Isle of Man's choice, if it chooses to legislate that way. We cannot argue."

**Deputy G.P. Southern:**

It looks like they are holding their hands up and saying: “Put it forward. God knows what we make of it, but there you go, mate.”

**Senator T.A. Le Sueur:**

Yes.

**Mr. M. Campbell:**

There is another issue which is interesting as well: they do not have these charges, I do not believe, in primary law. They have them in regulations, so it would not be very difficult to change matters if it is not ECOFIN compliant. John, is that right?

**Mr. J. Harris:**

Yes, that is right. There is a big difference to changing a primary law which takes 6 months, basically, and changing the regulations which they can do as a function of (...inaudible).

**Senator J.L. Perchard:**

So they are flying a kite, but they have a backstop.

**Mr. J. Harris:**

But they have a backstop.

**Mr. M. Campbell:**

Yes, that is the way it begins to look.

**Senator T.A. Le Sueur:**

It could be dangerous for us to go too far, just following that route blindly without an alternative in my back pocket, because if it is unsatisfactory for them, after going back to square one, we could be up against time pressures.

**Deputy P.J.D. Ryan:**

Could we just highlight this difference on your current deemed distribution proposal, some of the detail of it? You are effectively going in for a last in, first out.

**Senator T.A. Le Sueur:**

That was the original proposal, yes.

**Deputy P.J.D. Ryan:**

Have you considered a first in, first out?

**Senator T.A. Le Sueur:**

Yes.

**Deputy P.J.D. Ryan:**

Why did you go for last in, first out?

**Senator T.A. Le Sueur:**

I think because we had to make our mind up one way or the other, and that was the proposal.

I am happy to look at the arguments for and against either.

**Deputy P.J.D. Ryan:**

For example, did you consider that any changes of accounting date would be difficult? With first in, first out it would make it much easier for any company if they - and for legitimate reasons - wanted to change an accounting date.

**Senator T.A. Le Sueur:**

Yes. I think the number of companies that change their accounting date, the yield will be reasonably small.

**Deputy P.J.D. Ryan:**

That is only one example.

**Senator T.A. Le Sueur:**

No, it would be the basic principle, whether FIFO (First In, First Out) or LIFO (Last In, First Out) was easier from an administration point of view, and what the effect would be on the yield.

**Deputy P.J.D. Ryan:**

I am surprised, in a way, that you did not think that first in, first out would be more appropriate really, and more in keeping with a deemed distribution; the whole concept of deemed distribution. You know, you made profits 3 years ago; they are the first ones to come out.

**Senator T.A. Le Sueur:**

Yes.

**Deputy P.J.D. Ryan:**

Is that not more logical?

**Senator T.A. Le Sueur:**

I think it may be, and I think, certainly from the submissions I have seen to date, first in, first out appears to be the preferred solution, if we are going to go down that route, and I do not think I am going to lose too much sleep over that one, unless there was some significant argument why LIFO is better. I would want (...several inaudible words).

**Mr. M. Campbell:**

What you are talking about here, LIFO/FIFO, is going to leave this penalty. Now, the penalty was to encourage distribution.

**Deputy P.J.D. Ryan:**

Right, I see.

**Mr. M. Campbell:**

But the tax revenues arising from the charge, from this penalty, are going to be fairly minimal.

**Senator J.L. Perchard:**

And administratively complex, is it not?

**Mr. M. Campbell:**

People keep on saying to me that all this stuff is very complex. I have to say, I do not find this particularly complex at all. It is pretty straightforward stuff. Mind you, I was trained in the UK Inland Revenue, and that is where complexity arises. **[Laughter]** It is really not all that complex.

**Senator J.L. Perchard:**

RUDL and LIFO probably are areas that are under the microscope currently. Is that right, Minister, from your end?

**Senator T.A. Le Sueur:**

I must say, the LIFO/FIFO argument had not appeared to me as significant at the present time. It may well be, as a refinement to our proposals, I would say in the light of feedback we have had, we would tweak it that way, but it is tweaked rather than the fundamental: "Yes, we do it; no, we do not."

**Senator J.L. Perchard:**

Another area, then, of the proposals - and bearing in mind we have just 15 minutes left - is the Guernsey option versus the Jersey option of deemed or actual distribution. Is this an area that you are really scrutinising again and revisiting, or are you going to stick to your guns on this one?

**Senator T.A. Le Sueur:**

I think the difficulty with pure actual distribution, it is again a question of simplicity versus yield. If you

go for actual distribution, am I going to get my required yield, and I suspect that the answer is maybe yes, maybe no, but it could appear uncertain. I think there would be a tendency to distribute as little as possible. I think what you might need to do is sort of have a “suck it and see” system, that you might need to have something on the statute book to say: “Well, we need to have a deemed distribution legislation available in case actual did not yield the sort of levels we needed.”

**Deputy P.J.D. Ryan:**

Yes, but are there any advantages? I mean, in terms of not so much with yield and all of the things that you are looking for - you need the money - but are there advantages in terms of investment, in terms of economic growth in staying with an actual distribution? I mean, is it not better for small companies if you want to engender growth, would that not be better?

**Senator T.A. Le Sueur:**

There are probably economic arguments for going for actual distribution or letting companies have the flexibility of paying what they need.

**Deputy P.J.D. Ryan:**

Yes, reinvestments.

**Senator T.A. Le Sueur:**

On the other hand, I have somehow to raise the £100 million or so that we need to fill this gap.

**Deputy P.J.D. Ryan:**

That is right.

**Senator T.A. Le Sueur:**

If actual distributions do not fill that gap then I - or we, the Island - has a problem.

**Deputy P.J.D. Ryan:**

I mean, in practice, do you think it is possible to try it on an actual basis? You could always change it later, could you not? **[Laughter]**

**Senator J.L. Perchard:**

It is a shame you do not have a video camera in here as well as a microphone. **[Laughter]**

**Senator T.A. Le Sueur:**

I think that there is an element of reality in that question, even though it is not practical to me.

I would like to find a way of being able to do that, but also being able to switch pretty quickly to deemed.

**Deputy P.J.D. Ryan:**

Yes. There are all sorts of administrative costs that you would avoid by doing it.

**Senator T.A. Le Sueur:**

I am not sure that there would be that much in it. There seems to be an implication that all this deemed distribution is going to be administratively complex. It will be more complex, but I do not know it is --

**Deputy P.J.D. Ryan:**

Not just for yourselves, but for businesses and accounting charges and all sorts of --

**Mr. M. Campbell:**

Can I just make a point here? Currently, when an accountant sends in the trading accounts, they do a tax computation and a capital allowances computation, and they have add-backs under the tax law. The deemed distribution computation will just be --

**Deputy P.J.D. Ryan:**

Another part of that.

**Mr. M. Campbell:**

No, it will just be in exchange though, a different thing. They do not send in tax computations any more under the current basis; they just send in their deemed distribution computation. So, it is not going to be that --

**Senator J.L. Perchard:**

How would deemed distribution deal with profits that have already been taxed at corporate levels in utility companies or financial service companies, how does that then work? You have already taxed the utilities and financial services, and then you deem a distribution, how can you manage that?

**Mr. M. Campbell:**

There will be no deemed distribution charge raised on utility companies, because the company is going to be taxed at 20 per cent, and that is it.

**Senator J.L. Perchard:**

So it will just separate that out?

**Mr. M. Campbell:**

Yes. We only have about 6, 7 or 8 utility companies.

**Senator J.L. Perchard:**

Financial services companies at 10 per cent?

**Mr. M. Campbell:**

That is an issue which is still being looked at. There are matters arising around that issue which the Minister would have to be in a position to --

**Senator J.L. Perchard:**

Is there a solution?

**Mr. M. Campbell:**

Yes, there are solutions. It is just a matter for the Minister to make a decision on it.

**Senator T.A. Le Sueur:**

Yes. You are going to have, effectively, something like a situation where the shareholders in a financial services company will be assessed at 20 per cent on their share of the profits, but with an allowance for 10 per cent of the company - or at least as a financial services company - so how you translate that theory into practice is Malcolm and the law draftsman's job, but the principle is fairly straightforward.

**Senator J.L. Perchard:**

How, Minister, will deemed distribution be applied when shares are traded halfway through the year? How does one deal with that? It is a minefield.

**Mr. M. Campbell:**

The draft law I mentioned earlier contains provisions which will allow either the accountant or the taxpayer - or me, as a fallback - to determine the actual ownership in that particular year of assessment, and there are 4 rules in the current draft law which outline how that is to be done. So we have addressed that issue; it will be a provision in the law.

**Senator J.L. Perchard:**

Could we have a copy of the current draft law?

**Senator T.A. Le Sueur:**

Yes, I suppose you probably could, on the basis that it is very much a draft. These things go through all sorts of iterations. It certainly would not be a document in publishable form.

**Senator J.L. Perchard:**

Absolutely. I hope you know that we are here in a positive light to try and --

**Senator T.A. Le Sueur:**

That is right. That is why I am saying, yes, I think you probably could.

**Senator J.L. Perchard:**

Yes, that would be very interesting, because it would help us a little bit.

**Senator T.A. Le Sueur:**

Yes. I think probably what we need to do is for me to be clear on my political decision about my preferred way forward before I start giving you draft laws, which may be totally irrelevant to a political decision. What we have tried to do here, in order to beat the clock, if you like, is engage the law draftsman in advance of making a political decision about which way I am going. It is almost putting the cart before the horse, but given the potential complexity of the law drafting, we thought it was better to make an early start.

**Deputy P.J.D. Ryan:**

Some time --

**Mr. M. Campbell:**

Yes, we could not leave the law drafting until the end of the consultation period. We had to start the law drafting before then because the timescales were so short, and the law is very, very complex.

**Deputy P.J.D. Ryan:**

I am going to be a bit provocative here, because sometimes it is necessary when you are so embroiled in such a complex situation to stop for a point; that is, relegate a point in time, and just take reality checks. The Zero/Ten, fine. The zero per cent company we all know is essential for the finance industry, but the rest of the zero rate has no doubt blown a hole in the integrity of our tax system, the Jersey tax system as a whole. We end up with a black hole, partly because of the 10 per cent, on the 10 per cent side, but also largely - or partly - as a result of (...inaudible). Now, are you still as convinced that all these patches to just try and patch up the integrity of our system; the deemed distribution; the possible RUDL charge; all of the other bits and pieces; the damage limitation exercises, are you still as convinced that we are doing the right thing, trying to make all these patches of sticking plaster? Are you still convinced that that is the right thing to do, or are you thinking that: "At the end of the day, is there some other way of filling the hole?" and probably we are talking about larger GST charges, are we not, as probably the only ones?

**Senator T.A. Le Sueur:**

Yes. What we have is a fiscal strategy agreed by the States last year, which we are trying to implement. An alternative would be to have Zero/Zero and a higher rate of GST. You could go down a Caribbean route, if you like. That is a political choice which we decided not to take last year. We decided to go for Zero/Ten and a low rate of GST. I think that was politically the right way forward, and I think that the



10 per cent rate was agreed as being a commercially competitive rate, and one which would increase the level of complexity to a certain extent, but I think we may be overestimating the level of complexity that the 10 per cent rate --

**Deputy P.J.D. Ryan:**

It is not so much the complexity of the 10 per cent -- sorry to interrupt you in full flow. It was not the 10 per cent that I was questioning, it was the patching up: not the zero for finance company purposes, but the zero for the rest of the corporate tax structure. It is that patching up and the look-throughs, the deemed distributions and the RUDLs, that was the area that I was sort of suggesting, or asking you to --

**Senator T.A. Le Sueur:**

To reconsider?

**Deputy P.J.D. Ryan:**

Have you? Do you regularly reconsider?

**Senator T.A. Le Sueur:**

Because you cannot reconsider that without overturning the whole basis of what this was caused by. A uniform rate of corporate tax is a requirement. The zero rate is a competitive necessity in order to keep our finance industry here, so if you have to have zero rate, you have to have a single rate across the board, and if you have to keep your finance clients here, then you have a zero rate. You then accept the odd additional requirement which that creates.

**Deputy G.P. Southern:**

Have you not effectively gone against your prime rule about simplicity in taxation, and you are creating quite a complicated, complex tax system?

**Senator T.A. Le Sueur:**

Which is why I am putting proposals in.

**Deputy G.P. Southern:**

Hence all these patches?

**Senator T.A. Le Sueur:**

Yes. Having proposals here which are quite complicated, I am now reviewing those and trying to see how I can whittle them down to a simpler system by, for example, not including arrival charge; not confusing this issue, if you like, with limited trading partnerships within these proposals; maybe going for a simple distribution --

**Deputy P.J.D. Ryan:**

55 per cent are Isle of Man or (...several inaudible words).

**Senator T.A. Le Sueur:**

-- in an effort to achieve simplicity, but very often you achieve simplicity at the expense of yield. If, as a result of that simplicity, my yield drops by £50 million, I have to decide whether that is a political policy which I can justifiably follow when I am tasked with raising £100 million, or up to £100 million? My preference is still, if I can, to try to get the simplicity. If I can achieve the simplicity, and still fill the coffers with the required amount of money, I will be a happier man.

**Deputy G.P. Southern:**

I think I am taking us back on to ground that we have covered before, but I do want to try and be specific, if I can. I do not think we have reached the answer. So, one of our witnesses has stated, for example, I quote from him: "If I am a wealthy individual, then I can roll up the profits in my company tax-free and therefore get a cash flow benefit. Unless you put in reams and reams of anti-avoidance legislation about matching loans and capital distributions of the company, it is going to take the tax law from this big [and I remember him saying it] to this big." He is going to get cash flow benefits as compared to the poorer employee. Is that not the case, that the anti-avoidance is going from there, a tax flow from that to that?

**Mr. M. Campbell:**

Not necessarily. When ITIS was introduced to the tax flow, there were substantial provisions for that initiative. The current draft law amounts to 45 pages of legislation, but can I just address the issue of shareholder loans? There is a proposal that if a shareholder takes out a loan that be taxed as a benefit in kind at 20 per cent, so you can no longer extract the zero rate tax-free profits for a loan that will be taxed.

**Deputy G.P. Southern:**

We wait to see where the clever accountants will take their advice next, so slap another patch on it, presumably.

**Deputy P.J.D. Ryan:**

So this is in your new draft law you are making?

**Mr. M. Campbell:**

It is in the proposals. It is a shareholder loan and it is a benefit in kind. It is in here in the Zero/Ten Design Proposal.

**Senator T.A. Le Sueur:**

It is inevitable that the anti-avoidance law has to be strengthened, and that is a fairly obvious sort of strengthening which you would do as a natural consequence of having a zero rate tax.

**Deputy G.P. Southern:**

Can I take you on to another point, and again, I think it is repeating, but I think it is worthwhile. We are talking about tax avoidance again, and I am quoting another witness: "If you are a company in Jersey and you are owned by a UK company, there are various anti-avoidance rules in the UK which might have deemed those profits to be that of a company under the CFC (Controlled Foreign Corporations) provision, but most of these pass because they are true Jersey companies; they are trading in Jersey." Now, I can see there being an advantage in their not paying any Jersey tax, because year one, they do not pay a dividend; year 2 they do not pay a dividend; year 3 they do not pay a dividend; year 4 they want to repatriate their funds, so they cease trading, liquidate, move their profits out, move the company out, and then start up again, presumably under a different name. That is certainly applicable to UK companies, and we talked about that before. That is a possibility. Does a similar situation not apply to local companies as well?

**Mr. M. Campbell:**

No, it does not. If the company is liquidated with prevalent tax-free profits, the prevalent tax-free profits will be assessed only on a Jersey-resident shareholder on a liquidation. That is in the proposals.

**Senator T.A. Le Sueur:**

So it is not a tax on the capital gains, it is a tax on the residual profits undistributed. It may --

**Deputy G.P. Southern:**

It may look like CGT (Capital Gains Tax), but we are avoiding any form of CGT. We will not go there, even though it looks like it.

**Deputy P.J.D. Ryan:**

It is on a specific area. It is only on a particular specific area.

**Senator T.A. Le Sueur:**

Because we are simply talking about assessing profits.

**Deputy G.P. Southern:**

Yes, but a UK-owned company will be able to do that, and you will not be able to claw that back?

**Mr. J. Harris:**

We would not have made any tax from the company anyway, so you would try and avoid (...several inaudible words).

**Senator J.L. Perchard:**

Just before we wind up, there is an area I want just to tackle with you - and I am aware of the time - it is about the distinction between investment and trading companies. It seems to me that there is a grey area here, and an opportunity again for possible avoidance. What are your views on that, Minister?

**Senator T.A. Le Sueur:**

I think we need to have clear definitions of where you have a mixed company, what its primary activities are. It may well be that you would need to go down a schedule approach, where your profits will be split between investment activities and trading activities, but in the majority of cases, an investment company will not do any trading. A trading company may have surplus cash which it invests. That does not make it an investment holding company, and so long as its primary activities are of a trading company, I would treat it as a trading company. You would have to effectively create an artificial beast which spends half its time trading, and half its time as an investment holding company. That is going to be quite an unusual structure, and I think if that sort of structure were to be in place, then we might have to assess it under 2 different schedules, or assess the profits under 2 different schedules. I do not know, Malcolm, whether you have any initial thoughts on that point?

**Mr. M. Campbell:**

Once again, in the current draft law, there is a provision which determines what an investment holding company is, because we are aware that some people may try and move from one to the other, but there is a legal provision which the Minister will be able to look at and decide whether he wants to go down that path, or to go down the simpler path of me determining: "That is an investment holding company on the basis of the evidence and the facts" or that it is not on the basis of the evidence and the facts. So it is either a statutory provision, or it can be current practice.

**Deputy G.P. Southern:**

It is probably going on a side issue, but it is --

**Senator J.L. Perchard:**

Well, could we expand on this one on the investment companies? I think Patrick --

**Deputy G.P. Southern:**

Go on, Patrick.

**Deputy P.J.D. Ryan:**

On the investment companies, I do have something just particularly on that. Could you explain to me what your proposals are with regard to management charges; professional charges on investment companies? I believe that the proposal - I could be wrong - is that you are going to add them back, from

a taxation point of view.

**Mr. M. Campbell:**

The proposal is that management expenses be disallowed so that the assessment on the investment income of the investment holding company is paid out on the same basis as the investment income of an individual taxpayer, so that there is no benefit in having an investment holding company. There will no longer be an allowance for management expenses. That does not mean, of course, that if a company has rental income that the expenses directly attributable to earning that rental income will be disallowed. That will still be allowed against the rental income as a charge, but not the general management expenses, like professional fees.

**Deputy P.J.D. Ryan:**

So, if an investment company invests in property, charges will be allowed?

**Mr. M. Campbell:**

The expenses directly attributable to earning that rental income will still be allowed, but not the management expenses, like professional fees.

**Deputy P.J.D. Ryan:**

Several difficulties occur to me around this area. You may well get then an investment company switching to property ownership. That would increase demand potentially for property locally, and so therefore you could get property prices rising as a result. That is one undesirable effect. The second one might be, you know, what happens if you get several people that want to invest in a company - several shareholders in an investment company - and they will need some kind of management to organise it, and get professional advice. I mean, presumably, professional advice would increase the yield on that investment company. It just does not seem right somehow that --

**Mr. M. Campbell:**

Well, essentially, it is putting --

**Deputy P.J.D. Ryan:**

I mean, I can see it is driven by the fact that you have an anomaly between a private person and a company-owned investment, is this where it is driven?

**Mr. M. Campbell:**

It is putting the 2 on the same lines, yes. The individual taxpayer, currently with investments in his own name, does not get any allowance at all against that investment income for any fees and professional fees he incurs, and the proposal is to put the investment holding company on the same basis, and the vast majority of investment holding companies are just holding investments. They have bank accounts, and

they have dividends and shares, and the proposal is to just disallow their management expenses relating to earning that income.

**Deputy G.P. Southern:**

Can I take you on to one of the mechanisms you have for generating tax, rather than not generating tax, which is your rules around property or property development tax, can you briefly - because it is very simple, I have yet to get my head around them - I would like an explanation of what they do.

**Senator T.A. Le Sueur:**

They assess property, rental income and property development proceeds at a 20 per cent rate.

**Deputy G.P. Southern:**

Excuse my ignorance, is that a new thing? What impact might that have on the economy and on tax? What are you looking at there?

**Senator T.A. Le Sueur:**

The majority of property developments currently are assessed as trading income under Schedule D Case 1, and are currently assessed at 20 per cent. So, we will simply continue that situation. Rental income is generally assessed either on the individual or on the company owner at 20 per cent, and that will continue. I think what it does is perhaps make sure that we get some revenue from property developments, and by eclectic structures which might not --

**Deputy G.P. Southern:**

That is an interesting word "executive" structures.

**Senator T.A. Le Sueur:**

No "eclectic", I think.

**Deputy G.P. Southern:**

Eclectic structures. Meaning?

**Senator T.A. Le Sueur:**

Well, rather complex in their make-ups, which are designed perhaps to avoid any liability on the company profits, and under a normal situation, a building company in Jersey in the future will have zero per cent tax on its trading activities, including property development. On the other hand, if the property itself is located in Jersey --

**Deputy G.P. Southern:**

It is one of those things you cannot put in your handbag and take away.

**Senator J.L. Perchard:**

I am aware of the time, Minister, just a couple more to round off, if you do not mind.

**Deputy G.P. Southern:**

Perhaps you would like to, just for my sake, give me a short paragraph in writing on the effect of the tax to people who --

**Senator T.A. Le Sueur:**

We can do it, although it is (...several inaudible words).

**Deputy G.P. Southern:**

I am sure there is something there, but it is not clear to me yet.

**Deputy P.J.D. Ryan:**

Just going back to one further question on these investment companies: now, in Guernsey, for example, I believe there would be a zero rate; an investment company in Guernsey will be a zero rate. Even if you are a Jersey resident, who might now suddenly switch his Jersey-based investment company to becoming a Guernsey-based investment company, but tells you about it so that you know about it - nothing untoward there - he will then be taxed on his dividends, which would be net of any management charges in Guernsey, would they not? You would charge it so that he can still get his tax deduction on his management charges and professional fees by running a Guernsey-based investment company, and then you would tax him on his dividends that he receives from that Guernsey company.

**Mr. M. Campbell:**

No, I would not allow the Guernsey management expenses.

**Senator J.L. Perchard:**

You would not allow?

**Mr. M. Campbell:**

No, I do not think so.

**Senator J.L. Perchard:**

But they would be Jersey management expenses.

**Mr. M. Campbell:**

But the proposal is that investment holding companies be assessed on the individual shareholder, on a pure look-through basis, so all the income of the company will be assessed on the individual shareholder

- in his name - without the benefit of any management expenses.

**Senator J.L. Perchard:**

Even for companies held overseas?

**Mr. J. Harris:**

It is the Jersey resident we want to tax.

**Mr. M. Campbell:**

It is the resident individual.

**Mr. J. Harris:**

As long as he is resident.

**Mr. M. Campbell:**

He is resident here.

**Mr. J. Harris:**

So he is subject to --

**Deputy P.J.D. Ryan:**

What lies behind this question is are you going to see Jersey-based investment companies emigrate?

**Mr. M. Campbell:**

No, I do not think so.

**Senator T.A. Le Sueur:**

No, I would not have thought that. I think that you have a distinction there between, if you like, a private investment company, where if I set up a company and I am going to own my shares, or if I invest in a foreign colonial investment trust, where that is a UK-managed operation, where they may well have agreed to market a dividend as an ordinary shareholder, and you might just get assessed on that dividend, but that is a totally different situation from market (...several inaudible words).

**Mr. J. Harris:**

You would not lose the companies, but the risk you have is you lose the residents. They expatriate themselves, because they do not want to be part of the Jersey tax regime. In other words, if you take the view that they are going to make that decision simply because they get management expenses deducted somewhere else, and they do not get them deducted here, and I would argue that that is right at the margin, but --



**Mr. M. Campbell:**

Yes. You really need to just bear in mind that there are management expenses I see charged in investment holding company accounts. It is pretty minor stuff. It really is not a big issue, because the charges are £800, £1,000, £2,000 and the income of the companies are very substantial.

**Senator J.L. Perchard:**

Just for the point of clarification, Malcolm, are you applying look-through to all investment companies, regardless of where they are located?

**Mr. M. Campbell:**

The proposal is that any Jersey residents with the investment holding companies will have look-through.

**Senator J.L. Perchard:**

If they are a Guernsey, Cayman --

**Mr. M. Campbell:**

It does not matter where they are. This is where the tick the box approach is so important, because they have to tick the boxes, and so do the investment companies.

**Senator B.E. Shenton:**

We are coming to the end. Are you still looking at appealing article 115 in respect of charities and superannuation funds?

**Mr. M. Campbell:**

That is a matter for the Minister.

**Senator T.A. Le Sueur:**

We are still looking at it, and I have not made up my mind on that one yet.

**Senator B.E. Shenton:**

I have heard a rumour that you were having second thoughts on that one.

**Senator T.A. Le Sueur:**

No, I have not made up my mind on whether we do or do not.

**Senator B.E. Shenton:**

I heard a rumour the other day that you had made your mind up on that one. **[Laughter]**

**Senator J.L. Perchard:**

That was Wednesday.

**Senator T.A. Le Sueur:**

No.

**Senator B.E. Shenton:**

The general feeling that I get is that they should be, because --

**Senator T.A. Le Sueur:**

That it should?

**Senator B.E. Shenton:**

It should yes.

**Senator T.A. Le Sueur:**

Yes, but I think there are two different schools of thought on that one.

**Senator B.E. Shenton:**

There are some people who were moaning about it.

**Senator T.A. Le Sueur:**

There are 2 different schools of thought on that one. I just need to see: (a) whether the principle is right; (b) whether the timing is right; and (c) how that fits into the Island fiscal strategy and the potential economic growth.

**Senator J.L. Perchard:**

The gentlemen on this side, is there anything else you would like to address? No?

**Senator T.A. Le Sueur:**

All I would say is, I think having refined my proposals, and hopefully simplified them and received some figures, I would need to come back to you again and probably give you a chance to read them, digest them, and then come back for second round of these discussions in a month or 2's time.

**Deputy G.P. Southern:**

Are you suggesting it is going to be one line and be very simple?

**Senator T.A. Le Sueur:**

I would like to keep it simple, and that is easier said than done.

**Deputy G.P. Southern:**

I am sure you would.

**Deputy P.J.D. Ryan:**

Just to conclude, the little curve ball we threw at you over the alternative to the RUDL with GST, that crosses over to the GST Sub-Panel review. Could you keep us informed on the GST Sub-Panel review side as well, if this goes anywhere?

**Senator T.A. Le Sueur:**

I imagine we should be able to let the left hand know what the right hand is doing. **[Laughter]**  
I am a bit sceptical about that one, I have to say.

**Senator J.L. Perchard:**

Thank you very much, gentlemen. It has been enjoyable and rewarding this morning, and I wish you luck over the next few weeks. There are some decisions to make, it seems.

**Senator T.A. Le Sueur:**

Yes, but all I can say is I will be better informed as a result of the feedback I have had, and hopefully with that additional information and what we discussed here, we can come up with the proposals and see what we need.

**Senator J.L. Perchard:**

Thank you very much and I will declare our session closed.