

18th November 2006

Senator J Perchard
Zero/Ten Sub Panel Chairman
Scrutiny Office
States Greffe
Morier House
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Dear Senator Perchard

Thank you for your letter dated 20th October 2006 enclosing a copy of the updated Zero/Ten Tax Design Proposals.

These proposals represent a marked improvement on the original and are indeed a credit to the Scrutiny process.

We now have a solid basis upon which the detail can be built. It would be very helpful for the consultation process to continue so that the legislation in its final form is workable and serves the best interests of the Island, its residents and foreign investors, the latter in respect of which our main source of income depends so heavily.

If I may I would like to pick up on paragraph 3.7 concerning Anti-avoidance powers. These are of course essential both to act as a deterrent and to provide the Comptroller with a mechanism for countering tax avoidance, when detected. I have no issue with the proposed amendment to Article 134A.

However, I do have strong views on the application of anti avoidance legislation. The 1979 Vestey case was a landmark case in UK tax avoidance history. The decision of the House of Lords in that case led to a radical change in UK law dealing with tax avoidance. Prior to Vestey there was only one piece of legislation – section 739, which the Revenue considered applied to all persons whether they were mere beneficiaries without involvement in setting up the avoidance measures, or whether they were themselves the instigators of the avoidance. The Lords overturned this approach on constitutional grounds in that it was up to Parliament to determine these matters, not the Revenue.

If Jersey adopts a tick the box approach and simply leaves it to the Comptroller to decide who shall be taxed and the quantum, we would be in the exact same position as the UK found itself in prior to Vestey and I strongly feel that we should not go there.

Following Vestey the UK changed its law. The position to this day is that the instigator of the avoidance is taxed currently on the income arising. Those who were not the instigators are taxed only if they receive benefits from the scheme and then only to the extent that the benefits can be matched with accumulated income. The same income can only be taxed once.

UK law on this subject is extremely complex as too is its administration. It begs the question as to whether it is right that Jersey should go down this road. I believe that we should not apply a sledgehammer to crack a nut. We are not the UK and our tax regime is famed for its relatively benign approach. We should be wary of upsetting the delicate balance that currently exists, albeit eroded somewhat for 11Ks by the changes effected in 2005, particularly if the Island wishes to continue attracting wealthy residents as part of its economic development programme.

Yours sincerely

J P Frith