

# STATES OF JERSEY

## SCRUTINY COMMITTEE BLAMPIED ROOM, STATES BUILDING

### GOODS AND SERVICES TAX REVIEW

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**Panel:** Deputy Rob Duhamel (Chairman)  
Senator Ted Vibert  
Deputy Bob Hill

**Advisers:** Mr Richard Murphy  
Mr Paul Frith

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#### EVIDENCE FROM:

**SENATOR TERRY LE SUEUR (President Finance and Economics Committee)**

**In attendance:** Mr Ian Black (States Treasurer)

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on

**Thursday, 16th June 2005**

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DEPUTY DUHAMEL: Is Mr Black going to sit alongside you?

SENATOR LE SUEUR: Well, he is just here to take notes and help me. If I have forgotten anything, he may be able to help me.

DEPUTY DUHAMEL: Okay. Are you aware of all the members of our Panel? We have two advisers. There is Mr Frith and Mr Murphy.

SENATOR LE SUEUR: Hello.

DEPUTY DUHAMEL: I think you know everybody else.

SENATOR LE SUEUR: I do.

DEPUTY DUHAMEL: And the token member of the public over here.

SENATOR LE SUEUR: I thought that was the press.

DEPUTY DUHAMEL: Well, I think he has probably got a dual rôle, possibly a triple rôle.

SENATOR LE SUEUR: Right.

DEPUTY DUHAMEL: I have to deal with the housekeeping requirements and read you out the warning message, so to speak. You have heard it before, but bear with us.

SENATOR LE SUEUR: Yes.

DEPUTY DUHAMEL: It is important that you fully understand the conditions under which you are appearing at this hearing. You will find a printed copy of the statement that I am about to read to you on the table in front of you.

Shadow Scrutiny Panels have been established by the States to create opportunities for training States Members and Officers in developing new skills in advance of the proposed changes of government. During this shadow period, the Panel has no statutory powers and the proceedings at public hearings are not covered by Parliamentary privilege. This means that anyone participating, whether a Panel Member or a person giving evidence, is not protected from being sued or prosecuted for anything said during the hearings. The Panel would like you to bear this in mind when answering questions and to ensure that you understand that you are fully responsible for any comments that you make.

Secondly, I would like to raise another issue. I received, and the Panel received, a note from you yesterday, indicating perhaps that we needed to address an issue of items that had been given in confidence.

SENATOR LE SUEUR: Yes.

DEPUTY DUHAMEL: And suggesting that we should have an idea of the format under which any of these items would be addressed. What I am suggesting is that if there are any questions addressed to yourself by any of the Members of the Scrutiny Panel or the Advisers which you feel would require a disclosure of any information that has been given to you in strict confidence, then one of two things should happen. First of all, we would ask you to decide whether you think that item could be continued to be discussed in the absence of any of the members of the public; secondly, whether it could be discussed in the absence of the members of the public and the advisers; or if it should be set aside for a further day for an in camera meeting. The decision will be yours and, from the Panel's perspective, we are mainly interested in that any questions of that nature that are put do actually get answered at some stage so that we can actually have a decision on the content at a later stage.

SENATOR LE SUEUR: Yes.

DEPUTY DUHAMEL: So feel free to press the panic button if you think it is necessary.

SENATOR LE SUEUR: I am sat near the door.

DEPUTY DUHAMEL: No, the door is going to be locked, apparently, and there is Superglue on your seat.

SENATOR LE SUEUR: Okay, now we know anyway.

DEPUTY DUHAMEL: With that in mind, I would like to kick off with the first question.

SENATOR LE SUEUR: If I can just say that I take your point about the confidentiality. It is not just for me, it is for any other Members who might be in the same sort of situation. I have no specific instances in mind, but it may come up so that it has to be dealt with on an ad hoc basis. My objective is to try to be as open and as helpful as I can. I am anxious that the Scrutiny process should work well, should work objectively as critical friend, yes, as critical friend of F&E if possible, but, more importantly, critical friend of the Government and critical friend of the Island. As long as we can work in that spirit, then I am happy that we can have a good discussion.

DEPUTY DUHAMEL: Right. Thank you for those comments and, if I may, I would like to pose

the first question. In a letter written by Senator Horsfall, dated 15th October 2002, to Ms Dawn Primarolo MP in the UK ----

SENATOR VIBERT: Do you have a copy of this?

SENATOR LE SUEUR: I don't.

DEPUTY DUHAMEL: A copy can be passed to you. **(Pause while same done)** In this letter, the last paragraph on the first page indicates that Jersey is prepared to commit to a standstill, that is to say not to introduce any new or replacement tax measures that include so-called "*harmful features*", along the lines, we understand, of those to be defined in the EU's Code of Conduct on Business Taxation, having regard to the terms of the Code as a whole.

The first question is in two parts. One is we would like you to explain to the Scrutiny Panel your understanding of the so-called "*harmful features*" within the EU's Code of Conduct, as referred to and, secondly, to indicate to what extent any of the measures that your F&E Committee have suggested to the States by way and means of new tax measures comply with the sentiment of the Code of Conduct.

SENATOR LE SUEUR: Right. Of course it is quite difficult for me to interpret exactly what Senator Horsfall (or ex-Senator Horsfall) was saying in that document, in that he had no doubt had previous discussions and correspondence so that there was a clear flavour between the parties of what was expected. Harmful features, the EU Code of Conduct of Business Taxation, this listed -- I'm not sure whether it was 100 or more, but certainly -- numerous harmful measures, of which only three or four related to any great extent to Jersey. The one, I suppose, which we are concentrating on primarily in this discussion is non-discrimination in terms of corporate tax rates. There must be no discrimination between Jersey residents and non-residents.

DEPUTY DUHAMEL: Could I just ask, for housekeeping purposes, whether or not the sound recording is picking up Senator Le Sueur? **(Confirmed)** Thank you. Could you also answer the second part of the question, in relation to any of the tax measures that have been put forward by your Committee, whether or not they are actually compliant with the sentiment, as you understand them now, of the EU's Code of Conduct?

SENATOR LE SUEUR: The proposals that we have put forward, that is to say a general rate of

zero for all companies, is, I believe, totally compliant with the Code and the rate of 10% for a minority group is also, we believe, within the spirit of the Code as well.

DEPUTY DUHAMEL: Have any meetings actually taken place with any UK or EU authorities to actually determine whether or not the compliance is actually acceptable to those authorities?

SENATOR LE SUEUR: The indication I have is that these proposals are commonplace elsewhere and are within the spirit and acceptable to the EU. Whether any meetings have been held, I can't say. I certainly have not been privy to any myself.

DEPUTY DUHAMEL: Okay. Any further questions from our advisers? Mr Murphy?

MR MURPHY: I think that what Senator Horsfall was referring to was a technical term that was in the EU Business Code of Conduct, which was in two parts. One was called "*rollback*" and one was called "*standstill*". Rollback was the list of unacceptable items, the 160-odd, or whatever it was.

SENATOR LE SUEUR: Yes, right.

MR MURPHY: Of which just four were from Jersey.

SENATOR LE SUEUR: Yes.

MR MURPHY: And they were fairly easy to define and Jersey is clearly taking steps to deal with those issues.

SENATOR LE SUEUR: Yes.

MR MURPHY: And they are indeed referred to by Senator Horsfall on the next page of that letter. He said: "We will remove these items which have caused you offence", harmful or however you define it.

SENATOR LE SUEUR: Yes.

MR MURPHY: So that was the one part of it and that was an element of the Code, but the second element of the Code was that any new laws should also comply with the spirit of the Code.

SENATOR LE SUEUR: Yes.

MR MURPHY: The Code did in fact set out five criteria as to what a new law should comply with.

SENATOR LE SUEUR: Yes.

MR MURPHY: So it seems that two quite distinct undertakings were given by Jersey to me; and this letter seems to confirm that. The first one is that Jersey won't introduce ... and curiously this is the order in which Senator Horsfall gave them. The first one was that Jersey wouldn't introduce any new laws which offended the Code.

SENATOR LE SUEUR: Yes.

MR MURPHY: And the second undertaking he gave was that all the items that had offended the Code had disappeared.

SENATOR LE SUEUR: Yes.

MR MURPHY: So, when Scrutiny asked me to have a look at these issues, one of the first things I did was go to familiarise myself with the Code in some depth.

SENATOR LE SUEUR: Yes.

MR MURPHY: And then compare the Code with what has been published, and in particular in paper P.44 this year.

SENATOR LE SUEUR: Right.

MR MURPHY: Which, again, I immersed myself into in probably more depth than I would ever have wished, to see how the two stack up one against the other. In doing that, I came up with concerns on three fronts, two of which happen to come up this afternoon.

SENATOR LE SUEUR: Right.

MR MURPHY: One of which is the look-through taxation provision and one of which is the 0-10 as it applies in particular to finance companies.

SENATOR LE SUEUR: Right.

MR MURPHY: Let us leave the second of those aside for the minute and we might come back to that.

SENATOR LE SUEUR: Right.

MR MURPHY: But let us, if we can, look at look-through first of all, because look-through is a subject which we have discussed at some length; indeed, Paul Frith and I spent some time yesterday afternoon discussing with the Panel Members the whole subject of look-through. I am pleased to say that, on some areas, Paul and I found quite a lot of common ground, which is good

news.

SENATOR LE SUEUR: Right, yes.

MR MURPHY: And that is that we have seen that there is an old UK precedent for something a bit like this and that we both agreed that, if this only related to individuals, then it would have nothing to do with the EU Code of Conduct on Business Taxation.

SENATOR LE SUEUR: Right.

MR MURPHY: But -- and this is the big but -- when I look at this, I can't see how this only applies to individuals, because when I read everything that has been written about look-through taxation, I see that, in the future, when the law is brought in, in 2008/9, any Jersey company which has a Jersey resident shareholder is going to have to prepare a tax return, exactly as it might do now, using exactly the same tax rules as now, and submit that to the tax authorities as now and, what is more, it is going to be obliged to make a payment to the tax authorities in many cases which will be 20% of its taxable profit, exactly as is the case now. Now, as far as I see it, that is a tax. Now, I know that it is said not to be a business tax; it is said to be a personal tax. The reason I know why that is said is that it has been put on record that this is a payment by the company as agent for an individual.

SENATOR LE SUEUR: Can I stop you there?

MR MURPHY: Sure.

SENATOR LE SUEUR: Certainly it is clear that in future a company will have to submit a computation of its profits to the Comptroller of Income Tax, just as it does now. That profit then has to be apportioned (for want of a better word) over the shareholders.

MR MURPHY: Yes.

SENATOR LE SUEUR: I cannot recall, either in P.44 or elsewhere, suggesting that the company should be acting as agent to shareholders in making a payment on account of that tax to the Comptroller.

MR MURPHY: It is on page 46 of document P.44.

SENATOR LE SUEUR: Page 46, thank you. I will just have to refresh my memory briefly.

MR MURPHY: At least, I think actually Paul quoted page 46, so I hope he used the right bit.

SENATOR LE SUEUR: Well, it may be that Paul can remind me of which paragraph we are talking about.

MR MURPHY: Shall I read what it said?

SENATOR LE SUEUR: Please.

MR MURPHY: *“Where a corporate for whatever reason does not actually distribute enough profits to enable the Jersey resident to meet the tax liability, under the look-through provisions, it is proposed that an undistributed profits charge or a deemed distribution charge be raised on the corporate as agent for the Jersey resident with an interest in it at the rate of 20%.”*

SENATOR LE SUEUR: Right.

MR MURPHY: So, if the Jersey company has not paid a dividend, it is forced to pay a sum of 20% of its taxable profits to the Comptroller of Tax as if it were tax on behalf of the individual Jersey resident shareholder.

SENATOR LE SUEUR: Yes, well, I can certainly understand that being separate to saying that the company would be assessed and payable, paying up tax over to the Comptroller of Income Tax. I can also read it as saying that it proposes that an undistributed profits charge or deemed distribution charge be raised on the corporate as agent, but I’m not sure that that necessarily provides a liability on the company as such for that assessment. I would have to check on the legal interpretation of that, bearing in mind that, at the moment, this is purely a proposal and has not received the force of law. It is just indicative of what might need to be done to meet the situation where quite clearly the shareholder of a company could be in difficulty if no profits were distributed.

MR MURPHY: Okay. I understand that. It is not a law as yet, it is a proposal, but I have read that and presumed that that is the proposal which would be interpreted into law in due course.

SENATOR LE SUEUR: I think we have to see with any law that we draft, firstly, that it is compliant with existing Jersey laws and, secondly, it is compliant with human rights and it is compliant with international obligations. Only if all of those are achieved then will the law be acceptable to my Committee, let alone to the States. So there is a lot of mileage yet to go, I think, before we cross that hurdle.



MR MURPHY: Can I ask why that proposal is being made though?

SENATOR LE SUEUR: I think it was indicative, because there were clearly fears expressed, particularly in a company which would have minority shareholders, that if the directors of the company chose not to declare a dividend, those minority shareholders could be penalised. Now, we may in the end say, well, that's a risk the minority shareholder takes and he will have to cough up whether he has got the money or not. That, I think, is still a matter for discussion and we will need to, I think, involve a lot more people in deciding what is the appropriate way to go forward. The spirit of the proposal is certainly that a minority shareholder should not be unduly penalised, but if one can't achieve the spirit of that without falling foul of some legal obligation, then the spirit will have to take second place.

MR MURPHY: I mean, my concern is that it looks as though it breaches B2 of the European Code of Conduct, which says that you cannot ring-fence an advantage from the domestic market so they do not affect the national tax base.

SENATOR LE SUEUR: Right. That, I would say, is a subjective interpretation. I totally give you the right to have that view, but I don't think it is the only view that need be held and I don't think it is necessarily at the moment the only view or even the right view. That is a matter of opinion.

SENATOR VIBERT: Paul, are you?

MR FRITH: Yes. You have been quoted in the *JEP* to the effect that there is a written record of EU acceptance of the fiscal measures proposed by Jersey. This was in Council conclusions of 3rd June 2003.

SENATOR LE SUEUR: Yes.

MR FRITH: The same message is in fact given in the Fiscal Strategy which was lodged on 1st June 2004.

SENATOR LE SUEUR: Yes.

MR FRITH: If I could just quote from that, it says: "*Some attention has been given to the durability of the 0-10 corporation tax structure in a fast changing world. The EU agreement specific to our proposal is contained in the record of the meeting of the combined EU Finance*

*Ministers (known as Ecofin) on 3rd June 2003. These Ecofin Council conclusions recognised the acceptability and the timescale for implementation of the 0-10 proposals to the European Union.”*

Now, it seemed to us in reading this and your comments recently that the fundamental issue which has been raised by Mr Murphy has actually already been covered and agreed, but it does seem now that what you are saying is that, whilst the principles are understood, there has still got to be some refinement possibly in terms of the final legislation. So it seems that we are at the position at present where we still do not know for sure whether Jersey's proposals will in fact satisfy the EU. Do you think that is a fair comment?

SENATOR LE SUEUR: No, I don't, because I think the EU is concerned with the general principle of a rate of zero tax across the board, with a limited exception. I think how that is implemented is not a question which that Ecofin document covered on 3rd June certainly. At that stage, we hadn't even thought how we might address the issue, so I am sure it wouldn't occur to them to put it into a document. I would in fact say that that document is a very general document, which would be quite hard to read and understand. It is not addressed simply to Jersey, but it is a general statement of principle for all territories. So I think one shouldn't try to read into that document more than there can reasonably be expected to be. Anything that happens to implement either the zero or the 10 will need to be consistent with the principles which earlier Mr Murphy put down.

DEPUTY DUHAMEL: Does Mr Murphy wish to come in?

MR MURPHY: Well, to some extent, Senator Le Sueur has now actually answered the point that in fact I was anticipating putting, which is about the fact that there is obviously the forward looking part of this, and it seems that, therefore, there is this two stage process of approval here. On 3rd June 2003, it seems very likely that Ecofin did -- I don't think there is any dispute -- agree that Jersey had accepted that it would get rid of all unacceptable practices.

SENATOR LE SUEUR: Yes.

MR MURPHY: And there is a record of that.

SENATOR LE SUEUR: Yes.

MR MURPHY: But it didn't actually approve look-through, for example, did it?

SENATOR LE SUEUR: It didn't specifically approve look-through. I don't think it would have been likely that it would have been put to them.

MR MURPHY: Right, but I have had it said to me by some people in Jersey that it did specifically approve look-through, by people who were apparently quite close to that discussion, but that is not true, it did not approve look-through?

SENATOR LE SUEUR: As far as I am aware, but if someone with experience and in authority is telling you differently, then maybe they are right. But, as far as I am concerned, there is a limit to what that document says.

MR MURPHY: Has any attempt been made to take the look-through provisions to either the UK or to the EU to say "As we have proposed it in document P.44, is this acceptable to you? Would you have objection?"

SENATOR LE SUEUR: No, I don't think at this stage it would have occurred to me. As you said in some of your opening remarks, the look-through provisions are primarily addressed to individuals, not corporates. To the extent that they apply to individuals, they are of no great concern to the Ecofin agreement or the EU arrangements in that particular context. It is only if you pushed the argument a stage further, which is where you were developing the idea of the company as agent, that there might be a problem. I see no problem at all in simply assessing shareholders as shareholders per se on the basis of looking through the profits of the company to their proportion of the shareholding in that company.

MR MURPHY: Can I say that I entirely agree with you that I think that the EU could have no objection to that point as a shareholder issue.

SENATOR LE SUEUR: Right.

MR MURPHY: My concern, and quite specifically my concern, is the fact that the company is being asked to make a payment at a rate of payment that appears to be remarkably similar to Jersey's old tax range -- obviously, it is the same -- and that appears to be where they might question whether in fact the tax has simply been reproduced, that the old division between an exempt company and a Jersey resident company has been entirely reproduced by the company

being required to make a payment of at least 20% on behalf of its shareholders, whether they had a tax liability or not, i.e., they are not paying as agent, because, if they were agent, they would pay what the shareholder owed on behalf of the taxpayer. But they are actually paying as principals, they are paying at 20%. I am trying to flag up what I see as the problem here.

SENATOR LE SUEUR: Yes.

MR MURPHY: And which I believe the legislation will need to tackle. This is, I hope, being friendly to Jersey, which is what you said you wanted this process to be.

SENATOR LE SUEUR: Yes, and I am sure that is an issue which will need to be addressed. Can I just say that shareholders will have a variety of effective rates of tax from zero up to 20 and, equally, just as you don't want to unduly disadvantage any shareholder, you wouldn't necessarily want to adversely advantage any shareholder group as a result of anyone else, so it is an issue that we are going to have to address. At this stage, all I would say is that it is still very much in the melting pot, but the general principle of attributing the profits of a company as computed for tax to those shareholders in proportion to their shareholding is one which, I think, is, you can say, nailed to our particular mast.

MR MURPHY: And I believe the EU will accept it.

SENATOR LE SUEUR: Yes. It is how we deliver it in an effective way.

MR MURPHY: Could I ask one last question on this point, and that is a fairly simple one? Do you think it is possible that, because there is a requirement for a Jersey company to pay at least 20% of its profits out, whereas a company owned by non-Jersey residents will not be required to pay out any of its profits, that the EU could say that there is a ring-fenced advantage for the non-resident company in that case, because obviously accumulating your profits tax-free is an advantage over the situation where you can accumulate your profits with a payment of 20% having been deducted?

SENATOR LE SUEUR: Were that to be a serious concern, I am sure we would have to address that and maybe avoid having the benefit to those minority shareholders of giving them some protection. I am sure we are all aware of the fact that minority shareholders in a company can always be at a disadvantage in one way or another and this may just be adding to their list of

woes.

DEPUTY DUHAMEL: Thank you. Any more points on that issue?

SENATOR VIBERT: On that subject?

DEPUTY HILL: If I could just come in on that and just to ask you, if you could, Senator Le Sueur, to justify what you just said? How much work has been put in to clarify the situation that Mr Murphy was just discussing? You said you think.

SENATOR LE SUEUR: At this stage, we are really establishing the high level principle, which is that there should be look-through, that the profits of the company should be attributed to the shareholders in that company.

DEPUTY HILL: So there is more work to be done?

SENATOR LE SUEUR: There is a tremendous amount more to be done yet. That will need to have the involvement of no doubt tax professionals, law professionals and maybe people from the EU to make sure it is compliant with that, with Human Rights and everything else. Yes, one of the reasons for debating the Fiscal Policy so early is that we know there is still a lot of work to do on the detail, of which this is just one example of many.

SENATOR VIBERT: Can I just ask whether in fact once the detail is actually put down -- as we all know, the devil is in the detail.

SENATOR LE SUEUR: Yes.

SENATOR VIBERT: Are you confident that once the detail to deal with some of these issues is actually put down, that it is going to be acceptable?

SENATOR LE SUEUR: Absolutely.

DEPUTY DUHAMEL: Mr Frith?

MR FRITH: Yes, acceptable in the sense that it will be pre-cleared through the EU or the UK?

SENATOR LE SUEUR: Any law change will need to go through the Privy Council before it becomes law anyway, so, to that extent, you would have clearance. As far as pre-clearance within the EU is concerned, that is not an issue I have addressed. I would think that we have enough general knowledge to know what might or might not be acceptable, and I can't at this stage be more specific than that.

SENATOR VIBERT: Is it possible to be hypothetical for a moment? At what point in time do you think it would be advisable, if at all, that once the detail is worked out and the law is being prepared and decided upon, that one should clear it with either the UK Government or the European responsibilities? Is there a point in time? Should we do it before we actually pass it into law?

SENATOR LE SUEUR: At this stage, I am afraid it is too hypothetical, because, until we know what we are proposing, it is difficult to know whether it is worth discussing it with the appropriate body or not.

SENATOR VIBERT: Let us assume then that, in our view, we have done all the work and we have done all the arguments.

SENATOR LE SUEUR: Yes.

SENATOR VIBERT: And it is all down to come to the States to be approved, by which time you have put it all together.

SENATOR LE SUEUR: Yes.

SENATOR VIBERT: Is there any point in there that you believe it is necessary for us to get that final approval?

SENATOR LE SUEUR: I suspect that the Inland Revenue, in particular because this is a Revenue issue, are not going to signify one way or the other their approval or disapproval. There are several matters where the Revenue in the UK are reluctant to or just will not express an opinion, not until after the event.

SENATOR VIBERT: So there is a risk involved that it could happen that, somewhere along the line, they may say, even if the Privy Council are agreeable: "Sorry, we have put this to our advisers and we just don't think it is a legal requirement"?

SENATOR LE SUEUR: If the proposals were unreasonable, yes, I think one has to be clear as to where ... we are drifting off from an evidence based discussion on 0-10 to hypotheses about law. The Privy Council will act in respect of the UK's domestic obligations or Jersey's domestic obligations to the Crown. I'm not sure to what extent the UK Privy Council get involved in matters relating to the EU.

SENATOR VIBERT: The reason I am putting that in my question is because I think many States Members will feel that they need some comfort when they are debating this that in fact “Yes, what we are doing would be compliant with whatever requirements are necessary.”

SENATOR LE SUEUR: Yes. At the moment, I have no reason to doubt that the general principles of this are totally compliant, but if there are particular issues, such as the one Mr Murphy has raised, then we will need to investigate those in a bit more detail at the appropriate time.

SENATOR VIBERT: Thank you.

DEPUTY DUHAMEL: Mr Frith?

MR FRITH: This is a follow on, if you like, from the fundamental question that we have just discussed. I think we can hazard a guess, as we have done, the answer, but I think it is fair to put it to you for the benefit of the Panel. Clearly a decision has been taken that profits of the company that are apportioned to shareholders shall only be apportioned and taxed on Jersey residents.

SENATOR LE SUEUR: I don't know if that is necessarily the case. I think they can be apportioned on all the shareholders, but may be only collectable on Jersey residents because we would have difficulty in collecting taxes elsewhere.

MR FRITH: That was the question I was leading up to.

SENATOR LE SUEUR: Right.

MR FRITH: Is it one of pragmatism that you decided not to seek to tax non-residents, on the basis of a collection difficulty?

SENATOR LE SUEUR: I don't even know at this stage that we have decided not to tax non-residents. We have made no provision in our Revenue forecasts for collecting revenue from those people, for reasons which I think are not difficult to understand, but whether we simply raise an assessment and leave it vacant or don't bother is yet to be determined. We are trying to make policy on the hoof here, I'm afraid, but you could have a person who is a transient resident -- sometimes in Jersey and sometimes not -- who might conveniently be non-resident in Jersey temporarily but then return to the Island. I am not sure to what extent, at this stage, without

complicating the issue too much, we would want to raise an assessment, vacate it or just leave it sitting there. These are, I think, matters of detail which we need to work out. They don't fundamentally change the general principle that profits should be apportioned to that shareholder. If we could collect it, we would. If we can't, we are not going to spend our time chasing after moonbeams.

DEPUTY DUHAMEL: Mr Murphy?

MR MURPHY: This may be a tangential question, so if you have a point on that one first of all, I should come in off of you.

DEPUTY DUHAMEL: No, put the tangential, because I was going to broach another subject.

MR MURPHY: Okay. It is tangential because it again looks at this question of how to collect tax in Jersey, because I think one of the issues appears to have become of concern in the reading that I have had is that some companies who have in the past paid tax here and some of the High Street names, for example, will not be paying tax in the future.

SENATOR LE SUEUR: Yes.

MR MURPHY: And so, reading the EU Code, whatever system comes up has to be OECD compatible, recognised by the OECD.

SENATOR LE SUEUR: Hmm hmm.

MR MURPHY: And the source basis for taxation is of course OECD compatible; and the source basis would say that any profits arising in Jersey should be capable of being taxed in Jersey, but, if that isn't being considered as a basis for taxation and if it isn't going to be used, why not?

SENATOR LE SUEUR: Yes. Those profits are being taxed in Jersey. They happened to be taxed at a zero rate.

MR MURPHY: Sorry, you are saying they are taxed in Jersey at a zero rate?

SENATOR LE SUEUR: Yes. Corporate profits will be taxed in future at a zero rate.

MR MURPHY: Right.

SENATOR LE SUEUR: The profits of that company will be attributable to the shareholders of that company and the shareholders as individuals will be liable.

MR MURPHY: Can I rephrase the question then?



SENATOR LE SUEUR: Yes, okay.

MR MURPHY: Have you considered taxing the profits arising from non-resident companies but which are earned in Jersey, have their source in Jersey, at, for example, 10% or 20%, whichever is deemed appropriate, and leaving aside all their profits which arise outside Jersey to be taxed at 0%; in other words, having a dual tax rate, one for Jersey source income and one for non-Jersey source income as a way of tackling this problem of the black hole that appears for taxation?

SENATOR LE SUEUR: I think you are in danger of trying to solve one problem and creating two more. The problem which you have to address is that of discrimination between different classes of company and different classes of shareholder, being resident and non-resident. That was the rationale for going to a zero rate throughout. You seem to be implying -- I may have misunderstood you -- that these companies should be assessed as companies at a company rate of 10%.

MR MURPHY: Or 20%.

SENATOR LE SUEUR: Or 20% or whatever.

MR MURPHY: But only on their Jersey source income, so that Boots should be (to use a name, because I went into their establishment this morning) taxed at 20% on their Jersey source profits, but of course not on anything else.

SENATOR LE SUEUR: That sort of basis, I think, would be difficult to apply.

MR MURPHY: Right.

SENATOR VIBERT: Could I just ask, because I seem to remember and you may be able to correct me, that during the States' debate we were told that the shareholders of these companies were going to be taxed; in other words, the companies were not going to be taxed -- these are UK companies -- but the shareholders would be taxed and there was a possibility that you would then get money repatriated back from the UK Chancellor to Jersey.

SENATOR LE SUEUR: Yes.

SENATOR VIBERT: I think then we were told that we didn't think we could have that kind of agreement. What kind of loss will that incur to the Revenue of the States of Jersey?

SENATOR LE SUEUR: The loss is estimated to be £10 million to £12 million a year.

SENATOR VIBERT: Is that included in the figures that we have had for the size of the black hole?

SENATOR LE SUEUR: Yes, it is.

DEPUTY DUHAMEL: Can I just come in there, if I may? What level of confidence do you attach to the estimates of the overall size of the loss of the monies in terms of States' revenues? We have estimated around about £80 million, but ----

SENATOR LE SUEUR: I think the fact that we have given a figure of £80 million to £100 million is indicative of the fact that it is not by any means an exact figure. The general indication is that it is of that order of magnitude. I would be surprised if it was very much higher or very much lower, but within that band it could be almost anywhere. It is effectively a moving target and I think, although I cannot be categorical, we may be seeing signs already that some of the movement is already occurring in anticipation of 2009/2010.

SENATOR VIBERT: Could it be substantially higher than that, than your estimate?

SENATOR LE SUEUR: No.

DEPUTY DUHAMEL: Mr Murphy?

MR MURPHY: In the letter you sent to the Chairman last week, I think, you provided various figures for the losses. When I added those up, they came to a figure of around £110 million.

SENATOR LE SUEUR: Right.

MR MURPHY: In document P.44, in addition to those figures, there is a sum which nobody has ever been able to explain to me, and it would be nice if somebody could, of £12 million of lost revenue, which is known to be happening before 2008, because somebody is leaving the Island.

SENATOR LE SUEUR: Yes.

MR MURPHY: So, if I add that £12 million on, that comes to over £120 million, which obviously does appear to be (using accountant's language) materially different from £80 million to £100 million. You are 25% to 30% out.

SENATOR LE SUEUR: Yes. The difficulty was that that £12 million tax that is leaving early, in advance of 2008, was already included in our calculations of the £80 million to £100 million deficit. It was perhaps careless presentation at the time, but we did say at one stage that there

was £25 million that would be lost in respect of companies not in the financial services sector. I only recently just answered a question from Senator Vibert about the loss of that and I said £10 to £12 million, and the reason is that the other £12 or £15 million or so are these companies which you have just referred to which are leaving in advance. Those two were lumped together, perhaps carelessly. So, in effect, the overall figure is not ... you don't have to aggregate that figure because it is already included. Correspondingly, although, yes, that does come ... I don't have the figures in front of me, but I will take your word that they come to about £100 million as it is.

MR MURPHY: One hundred and ten.

SENATOR LE SUEUR: There is scope, because exempt company tax will no longer be collectable, there is scope to replace that by charging a higher annual return fee and recover from all companies, whether resident or non-resident, a sum equivalent to that figure.

MR MURPHY: I included that in the figure. The reason why I was so interested to know what that number was because I actually I had prepared an estimate of what I thought the black hole might be on behalf of this Committee.

SENATOR LE SUEUR: Thank you.

MR MURPHY: And it came to exactly the same number as you came to this morning, working from the documents in the public domain, of around £110 million to £120 million. So we were in complete agreement on this subject.

SENATOR LE SUEUR: Yes.

MR MURPHY: But what I was surprised by was that it was obviously more than the number that was being put forward for discussion in document P.44, and I presumed that your figure would be the same as document P.44 in your letter to the Chairman, and it isn't. I just wondered why the movement upwards over the last three months.

SENATOR LE SUEUR: There has been no change. We are not quite sure whether this figure of an extra £10 million has come from. There may be a need to enlighten me because I think the most recently published figure I have here is that shown in **this** book -- you may not have a copy of that.

MR MURPHY: No, I don't.

SENATOR LE SUEUR: Perhaps I can temporarily pass you that and you may want to check off those figures against yours. **(Same handed to Mr Murphy)**

MR MURPHY: The figures I used came straight out of your letter actually to the Chairman, as I said.

SENATOR LE SUEUR: Oh, well, I occasionally make mistakes.

SENATOR VIBERT: Never.

SENATOR LE SUEUR: Which letter are we talking about?

MR MURPHY: The letter dated the ...

DEPUTY DUHAMEL: 8th June, I think.

MR MURPHY: 8th June.

SENATOR LE SUEUR: Yes, I'm with you. I think one has to take that with a certain degree of care. I'm talking about approximately £50 million, up to £10 million, up to £30 million or £40 million.

MR MURPHY: And another £10 million.

SENATOR LE SUEUR: And another £10 million ?

MR MURPHY: Which comes to the number I have spoken about.

SENATOR LE SUEUR: I think certainly the figures I would go for are the figures I have there. They are the figures which I am advised by the Comptroller of Income Tax and they are confirmed to me as being in the right sort of order of magnitude. In fact, I mean, let us hypothetically, for once, assume that you are right and it was 110. Would that make any difference?

MR MURPHY: Yes, because obviously when where we are going to move to eventually in the Scrutiny Panel and one of the issues that I was asked to look at is what might be the required rate of GST to recover the difference.

SENATOR LE SUEUR: Ah right.

MR MURPHY: Obviously if the difference is £110 million there is another 20 at least million pounds to recover, and that would imply that a rate of at least 5% would be required to make up the difference and not 3%.

SENATOR LE SUEUR: Yes.

MR MURPHY: So clearly at the end of the day, yes, it does make a difference, because the rate of GST is going to be dependent on the size of the gap, I suspect.

SENATOR LE SUEUR: Yes, it is, and certainly from our point of view we have said, and I stand by that figure, that 80 to £100 million is the right sort of estimate. But we are not going to know until about 2012 just what the overall effect has been, and it will be at that stage that we will be in a better position to assess whether a GST rate of 3% is adequate.

SENATOR VIBERT: So that we are clear on this, the estimate is £80 million and ----

SENATOR LE SUEUR: No, the estimate we have used is £100 million. Of the £100 million, we are looking on the gloomy side and, of the £100 million, £20 million will come from the saving of States' expenditure, £20 million from economic growth and £60 million from various revenue tax raising measures.

SENATOR VIBERT: So the question you will remember I asked is were you comfortable with those figures.

SENATOR LE SUEUR: Yes.

SENATOR VIBERT: That is something that the Scrutiny Panel can say that that is the figure that the Committee are comfortable with, even though you can't be exact about it.

SENATOR LE SUEUR: We can't be exact. We are working on a figure of £100 million. If it turns out to be 90 and we have got a little bit of extra revenue, I know a person who can spend it.

SENATOR VIBERT: If it turns out to be more, you put GST up by one per cent or whatever.

SENATOR LE SUEUR: Well, that is one option. Or you could put up petrol duty or airport landing dues. You may. It just gives you another weapon. At this stage, what we want is a tax system capable of raising £100 million, as I have said, a tax package capable of raising £100 million, of which 60 will be through revenue raising measures.

SENATOR VIBERT: Do you want to move on? Paul?

MR FRITH: We understand that at present there are approximately 33,000 companies registered in the Island -- that is not a question, that is taken from Senator Walker's letter -- of which 700 are regulated and licensed by the JFSC and a decision has been taken to apply the

10% rate of tax to those companies.

SENATOR LE SUEUR: A decision has been made to apply the 10% rate to companies in the financial services sector. Attributing that to companies regulated by the JFSC has not yet been an approved policy, but it is indicative that it would be convenient to try to find some link between companies which are regulated by the JFSC and what we can define as the financial services sector. The financial services sector as such has not been finally determined down to the last detail. I have already discussed this at a personal level as to where that line might be drawn, because I am aware that there could be some entities not regulated by the JFSC which should be in the group, but there are other entities which are regulated by the JFSC which maybe should not be in the group. So it is not at this stage a clear message that every company or every institution regulated by the JFSC will be subject to 10, but no others will be. There again, we are trying to delve into much detail which hasn't yet been agreed.

MR FRITH: I think there is a widely held view within the Island and outside the Island that companies regulated and licensed by the JFSC will be liable to a 10% rate.

SENATOR LE SUEUR: And I am sure that is true for 95% of the cases, but I am sure equally that there are one or two around the edges which don't fit totally comfortably with that and we will need to look at them.

MR FRITH: The reason for the question was as to why, out of the 33,000 companies, only 700 have been highlighted as potential targets for the 10% rate. Why should it be limited to those 700? Why can't it be extended to other categories of business in the Island?

SENATOR LE SUEUR: It could be. Actually, I'm not sure whether that 33,000 ... it doesn't sound quite right to me. Let me just try and do a bit of quick thinking. **(Pause)**

MR FRITH: It may be wrong, but Senator Walker's letter.

SENATOR LE SUEUR: I am trying to think of what exempt company tax revenue figure we get at the moment, which I thought was something like £10 million. Now, £600 per exempt company gives me 16,000 exempt companies and that is the figure which I have in mind. If it is 16,000 exempt companies, that means another 16,000 locally based companies presumably. I am not sure what that 33,000 represents.

SENATOR VIBERT: It is registered companies.

SENATOR LE SUEUR: Registered companies.

SENATOR VIBERT: Just registered.

SENATOR LE SUEUR: Registered companies.

MR FRITH: It says 33,000, but, you know, broken down by residents and non-residents, but both have registered with the JFSC.

SENATOR LE SUEUR: Right, yes.

MR FRITH: So, whatever the figure is, the 700, if that is correct as well, is a small percentage of the total.

SENATOR LE SUEUR: Yes.

MR FRITH: But the proposal to tax, which you say has not yet been finally decided, I believe that the generally held view is that that is what will happen. Perhaps, if it is not going to happen, statements ought to be made to that effect.

SENATOR LE SUEUR: Yes.

MR FRITH: But if that is what in fact transpires, it still comes back to the question as to why that particular category of company and why not other categories of company be brought within the 10% rate, because clearly the more that are in this category, the more revenue or the more direct taxes earned and the less need for raising taxes elsewhere.

SENATOR LE SUEUR: That is right. It is a matter of judgment. The underlying principle is that there should be a basic rate of tax of zero except in a minority of situations. Now, we have said that, as you rightly say, 700 out of 30,000 companies is a clear minority. You could up it to 1,000 or even 2,000 and you would still be in a significant minority. I think there is scope to extend it, but you start to, I think, question the principles under which you are applying this and sooner or later, I think, you are going to run the risk of people saying: "Well, the exceptional rate is in fact the norm and the zero rate is the exception." To me, it is fundamental for the ongoing viability of the financial services sector in Jersey that the zero rate is regarded as acceptable and deliverable and I would not want to try to raise another few bob (to put it crudely), to raise a small amount of extra money and risk jeopardising that status just for a final few pence. But if I

had thought that there was scope to extend the zero rate exception to another group, that would be a possibility.

MR FRITH: Utilities perhaps?

SENATOR LE SUEUR: Utilities is mentioned in our document and that is quite a likely one, because, if you add another five there, it doesn't seriously affect your proportion of minorities and it is likely that we would assess utilities. I think P.44 gives that very clear hint. At the moment, the majority of those industries are either totally or the majority of shareholding is held by the Government, so, of course, it is out of one pocket and into the other.

MR MURPHY: I have to welcome what you have said, because it has provided me with some reassurance that you haven't yet decided that the JFSC is going to be the determinative, or that JFSC regulation is to be determinative, of whether somebody will be taxed or not. Again, when I had a look at the prospect of the people who thought the proposals were complying with the EU Code, when I looked at that implication (and I think it is clearly implied in P.44 that JFSC regulation will be the criterion for taxation of the financial services sector, which is quite different, for example, from the Isle of Man), then I turned and had a look at the Financial Services Law of 1998 and the criterion that it laid down for regulation and found that it is possible for the Commission to approve any transaction as being an SPV at its discretion.

SENATOR LE SUEUR: Yes.

MR MURPHY: Now, we have had some discussion about how that discretion is used, but what is clear is that, under the EU Code, that would fail completely and utterly.

SENATOR LE SUEUR: Yes.

MR MURPHY: EU Code B5 says that there must be an absolutely clear and transparent method for determining who is taxable or not.

SENATOR LE SUEUR: Yes.

MR MURPHY: And SPVs are defined by this law, the Financial Services Law.

SENATOR LE SUEUR: Yes.

MR MURPHY: Which is apparently completely discretionary. The Commission can decide that any transaction is an SPV or not.



SENATOR LE SUEUR: Yes.

MR MURPHY: So when I matched these two up against each other, I thought “Jersey is heading for another failure of this Code”. So can I simply put it on record that, as you have already said you haven’t made up your mind as to how you are going to define the financial services sector for this purpose, that I think you would be wise to put it on record that I think that would be the wrong criteria to use because I really cannot see how the JFSC legislation could be reconciled with a taxing document under the EU Code of Conduct.

SENATOR LE SUEUR: No. I think one of my abiding principles in P.44 and P.106 was that of keeping it simple, and clearly where you have something which looks very akin at first glance to the group of people you are trying to assess, it is a good starting point, and I think it remains a good starting point because the Financial Services Commission will certainly have a record of major financial institutions in the Island and the measure of their activities and so on. We would be daft to start back at square one when there is already information usefully available. But, as I said to Mr Frith earlier, the reality is that, although that may fit 90% or 95%, or even 99%, of the cases quite happily, there will be a number on the fringes which we need to address. That needn’t stop the general principle, but I think that perhaps you are wisely pointing out pitfalls ahead of us here, for which I am grateful, but the general principle is that obviously we wanted to try and find a simple way of assessing what was a financial services company.

SENATOR VIBERT: Would this create any opportunities for tax avoidance? Is it an opening by only having those companies that can lead to people being able to manipulate things cleverly?

SENATOR LE SUEUR: Um ...

SENATOR VIBERT: In other words, the big thing would be to try and get your company registered with, or your operation registered with, the JFSC with the sole purpose of being exempt?

SENATOR LE SUEUR: Well, no, if ... I’m not sure I follow you there, Senator, because if the company is registered with the JFSC, it will be paying a rate of 10%. If it is not registered ... to take a simple situation where FSC equals 10 and non-FSC equals zero, if they are registered, they are going to be paying a higher rate of tax than they would otherwise.

SENATOR VIBERT: Right.

SENATOR LE SUEUR: So I cannot see that anyone is going to avoid tax by registering with the JFSC.

SENATOR VIBERT: Okay.

SENATOR LE SUEUR: If you are saying is there any possibility of tax planning using this, I would say it is not our intention that there should be, but you have a couple of accountants on your advisory panel here who may find ways to prove me wrong.

SENATOR VIBERT: They have already terrified us.

DEPUTY DUHAMEL: Mr Murphy?

MR MURPHY: One of the things that surprised me when I began to see the documentation, because I didn't know this, and Jersey Finance drew my attention to this point, was that when they made the first submission on the GST, which they did last December, they made clear in their submission that SPVs do trade in Jersey with each other. So Jersey resident SPVs trade with each other, undertaking what are in effect financial services transactions, and that is what their submission says. Now, that to me was a surprise because I thought, in that case, they would be liable under existing rules for Jersey taxation, because, if you undertake trade in Jersey, even if you are an exempt company, as far as I read the rules, and I read the legislation with some care, that seems to say they should be paying tax.

I have to say that the public comment by lawyers, accountants and others on their websites and so on seems to say that that is not what happens and there seems to be a dichotomy between what I can see the law says and what apparently happens, and the SPVs certainly don't seem to be paying tax, even if they are trading in Jersey.

I just wonder then. You have just indicated that there are some circumstances where the people who are not at present JFSC regulated might be taxable in the future. Do you believe that these SPVs who are currently trading in Jersey -- and Jersey Finance advise that this is an increasingly common occurrence -- will in fact be operating inside the financial services sector in future and therefore will be subject to the 10% tax?

SENATOR LE SUEUR: That's a question which I am afraid at this stage I can't answer and I

can't even express a view on. I'm not aware of Jersey Finance's comments; I'm not directly aware of any SPVs trading with each other in Jersey; and I'm not at this stage able to comment on the application of the current Income Tax Law, although I would agree that prima facie any business which is carrying on a trade in Jersey is liable to corporate tax on its profits.

MR MURPHY: That is why I was so surprised by Jersey Finance's submission. If I'm honest, I was absolutely amazed by it.

SENATOR LE SUEUR: Yes.

MR MURPHY: Because when I learnt offshore finance (and I did with Peat Marwick, in the days when Peat Marwick were Peat Marwick and not KPMG) that was the sort of the no-no that you were taught to avoid.

SENATOR LE SUEUR: Yes. As I say, I would need to have a lot more information on this situation before I expressed any firm opinion, other than to say that the Income Tax Law does indeed make people trading in Jersey, carrying on a trade in Jersey, liable to corporate taxes.

MR MURPHY: So we agree that that is right. Can I come back, if I may, and ask a follow up question? This concern arose again by just working through this logic, by reading the various pieces of legislation, because a company becomes an exempt company, as far as I can understand it, by submitting an application saying what it intends to do in advance of doing it and satisfying the JFSC and the Comptroller of Tax -- I think JFSC actually. A Special Purpose Vehicle applies to the JFSC to actually be exempted?

SENATOR LE SUEUR: Well ...

MR MURPHY: Paul, you might be able to help us.

MR FRITH: If I might interject, the JFSC will determine whether an SPV ought to be licensed. For example, is it conducting investment, fiduciary and those sorts of activities, but the JFSC will not determine the tax basis of the entity.

MR MURPHY: No, that is submitted under the ----

MR FRITH: That is within the purview of the Comptroller, and typically the SPV will file an exempt company application with the Comptroller. It will also make a declaration of its shareholders to the JFSC, so the Comptroller does not know the shareholder identity, but the

JFSC does. In effect, the two work together, because the declaration provided to the Comptroller that the company applies for exempt company status goes hand in hand with that, that it has no Jersey shareholders or, if it has got shareholders, they on a very small basis.

SENATOR LE SUEUR: In a minority, yes.

MR FRITH: The Comptroller will then grant exempt status.

MR MURPHY: But the Comptroller grants exempt status and then ... again, I make the point very clear, I didn't realise this was happening until Jersey Finance drew my attention to it and then I found some lawyers certainly in the Island who implied that this is the case as well, but the SPVs traded with each other in Jersey and yet end up not paying tax. The question then comes should the Comptroller be actually making enquiry after the initial approval of the exempt status to determine whether in fact there is a tax liability arising, because the transaction has not been as it initially appeared. So should there be a tighter control of the SPVs in this way to determine tax liability as a way of plugging the gap either now or in the future?

SENATOR LE SUEUR: Right, this is an area where I have to admit to a limited expertise, and you may need to ask the Comptroller of Income Tax the basis on which he would assess the activities of the SPVs on the Island. All I would say is there is also an obligation, I would have thought, on the administrators of those vehicles to notify the Comptroller of Income Tax of any change in ownership of the company which might cause it to cease to be exempt.

MR MURPHY: Right.

SENATOR LE SUEUR: And I would have thought that there would also be an obligation to disclose if the company then continues activities in the Island, but I can't quote definitely on that one. You would have to ask the Comptroller of Income Tax for his ruling on that point. I wonder to what extent this is relevant to the revenue yield we will get from GST. I know you are interested in asking the question, but I am not quite sure, in terms of today's Scrutiny Panel, where we are going.

MR MURPHY: It is relevant because it determines the scope of the financial services industry in the future and, therefore, has influence on how much tax will be collected at 10% and obviously that has a significant impact upon the way in which GST is to be applied, which influences the

size of the black hole. So, yes, I think it is a relevant question for that reason. That is why I have taken that line of enquiry.

SENATOR LE SUEUR: Okay.

MR FRITH: All I would say, Mr Chairman, is, as a point of clarification, the application for exempt company status is made on an annual basis.

SENATOR LE SUEUR: Yes.

MR FRITH: And, therefore, if the circumstances of the company change, then it has to be notified on that annual declaration to the Comptroller.

SENATOR LE SUEUR: Yes.

DEPUTY DUHAMEL: One additional quick question, if I may. Would you, Senator Le Sueur, be happy for the Comptroller of Income Tax to actually appear before the Scrutiny Committee in his own right?

SENATOR LE SUEUR: Yes. I mean, I have no objection to the Scrutiny Panel calling who they choose to appear. There will be matters obviously of confidentiality of client's details which he can't advise you on, but I am sure that, in terms of interpretation of the law, if that is relevant to your Scrutiny, yes.

SENATOR VIBERT: I think that is the basis on which we would want to call him.

DEPUTY DUHAMEL: Thank you. Mr Frith?

MR FRITH: I appreciate that you may not have yet got this far down the line, but again I go back to public statements that have been made and also which have been stated in propositions put before the States. This deals with the application of the anti-avoidance legislation which is proposed.

SENATOR LE SUEUR: Right.

MR FRITH: The anti-avoidance legislation would appear to seek to tax the profits of companies based outside of the Island and, going hand in hand with that, as we understand it, the Comptroller will seek to obtain information on foreign trusts and foreign companies and, to the extent that they exist, the Comptroller will seek to tax the profits of those foreign companies to the extent that they can be attributed to Jersey residents. Now, the question is has the Committee

considered the implications of that general quota (if I can call it that) in relation to innocent parties?

Maybe I can just give an example. If I have, say, an uncle living in the United States who has created a trust, underneath of which there is a company, and I am a beneficiary of that trust on a discretionary basis, is it reasonable that the profits of that company should be apportioned to me even though I cannot control the dividend policy of the company or indeed the trust underlying it?

SENATOR LE SUEUR: I think you were right in your initial remarks because there is a lot of work to do on the anti-avoidance provisions, and I think there is quite a misconception that is about as to how draconian they might or might not be. It is certainly not my Committee's intention and, I believe, also not be the intention of the Comptroller of Income Tax that they should be draconian, but they should be sufficient to ensure that the residents in Jersey do not artificially create devices to avoid due obligations. We have, as you know, Article 134A, which is a general catch-all provision. It is arguable that that of itself could remain adequate, but I think, as we move into a perhaps more litigious and more complicated tax framework than I first learnt when I was an articulated clerk, we perhaps need greater clarity than 134A provides and, as we all know, the more you go into the detail, the more chances it does to create loopholes.

It is a balance which I am certainly acutely aware of and our aim is to keep it as simple as possible. That is one of the general principles of all the tax proposals. We do not want to make the anti-avoidance provisions draconian, but, equally, we don't want to have a situation where anybody with an ounce of sense can find a way around them, so that, for example, if I decided to stick all my assets into a Guernsey company whilst I'm still living at St. John's, I would not expect the Comptroller of Income Tax to say: "Oh well, never mind, it's been a nice day"; I would expect him to assess me. But, equally clearly, if there are cases such as the one you identified, I would not expect the Comptroller to be pursuing your uncle in Illinois or wherever or you for the details of that transaction. What we have to do is to ensure that there is a general list of exemptions, recognising that as soon as you create any list that is an excuse to find ways of seeing what is on or not on the list. So I appreciate the difficulties we are going to create for ourselves, but it is, I think, necessary in order to avoid the obvious inference that the poor

innocent taxpayer at the bottom end of the chain has to pay it in full and anyone who has enough money to employ an accountant can find a way around it. That would not be equitable either.

DEPUTY DUHAMEL: On what basis, changing the subject slightly, was the decision taken to move towards 0-10 as the most appropriate way to reform the tax laws?

SENATOR LE SUEUR: Sorry, we're jumping about a bit here. On what basis was the decision taken?

DEPUTY DUHAMEL: Yes.

SENATOR LE SUEUR: I think we should remember it is two decisions. It is a decision, firstly, to move to a general rate of zero. There has to be a general rate, whether it be zero, 5, 10, 20 or anything else, and one has to look at what is commercially feasible for Jersey, which derives a lot of revenue from the financial services industry, as we all know. Frankly, if we did not have a rate of zero tax as the general rate, then a lot of our client companies throughout the world would be migrating and the financial services industry in Jersey would be in a much poorer situation. So a zero rate, I think, is there for a start on two grounds. Firstly, we have to have one rate throughout for EU purposes and we have to have a competitive rate, which tells us to go for zero, along, I have to say, with several other offshore jurisdictions who are either moving that way or have been there for years.

The 10% rate is very much a subjective issue, and it is driven entirely by competition. One has to look at what rate. Effectively it is a choice between having a rate which is so high that businesses go elsewhere or so low that it doesn't generate to us sufficient revenue. Given that other jurisdictions (primarily Guernsey and the Isle of Man) are looking at a 10% rate, and given also the effective rate of tax paid by many financial institutions, such as main clearing banks on their world-wide profits, a rate in the order of 10% is, in our view, commercially the most desirable. We could have had 9½ or 10½. We could at a pinch have gone to 12½%, which is the current Irish rate. But, at 12½%, even at 10% in some cases, that tax represents a real cost to those financial institutions of doing business in Jersey. The higher the rate you put it, the greater the cost of doing business in Jersey.

We have to look not just at the tax rate these businesses are paying, but also what salaries

they are paying, what rents they are paying, what rates they are paying, what social security contributions they are paying and overall seeing whether Jersey remains a competitive place in which to do business. On those grounds, we judged that 10% was the appropriate rate for Jersey.

DEPUTY DUHAMEL: Okay, thank you.

SENATOR VIBERT: Can I just put to you that I take it that this wasn't a voluntary thing that Jersey and the other jurisdictions decided to do, putting us into this financial position. Can you give us some idea of what kind of pressure was actually put on Jersey to actually do it?

SENATOR LE SUEUR: Basically no, because that was before my time as President of F&E.

SENATOR VIBERT: Have no concept of what happened, as to whether in fact you were really given any alternatives, because there is a popular view in the Island, as I am sure you know ----

SENATOR LE SUEUR: Yes.

SENATOR VIBERT: ---- that we are independent and we don't have to do what the British Government tells us, etc, etc.

SENATOR LE SUEUR: Yes.

SENATOR VIBERT: I think those who understand the situation know that in fact, in finance terms, that is not the position because, you know, we really do have to comply and conform with the great powers outside of Jersey. So do you have any concept of whether this was a gun to our heads by the British Government or Europe to say: "You either do this or we will bring in some pretty damaging actions against you"?

SENATOR LE SUEUR: I think there was a clear indication as far as the zero rate, because I think the 10% rate has almost no relevance in this context. There was a clear indication that unless we moved to a uniform rate of tax, be that zero or anything else, then the UK Government would be seriously embarrassed in relation to undertakings given to the EU. Now, I don't think it needs the Government in the UK or anybody else to spell that out to us. If we have got any commonsense at all, we can see that they have got most of the aces and the kings and we've got twos and threes.

SENATOR VIBERT: Absolutely, yes. Thank you. I wanted to raise that because of the public perception there is that we could in fact have fought against it but that we were usurped, well not



usurped, but, as you put the point: “We are independent, you cannot tell us what to do.” There is that view in a particular group in Jersey.

SENATOR LE SUEUR: Yes.

SENATOR VIBERT: And I think it is important to try to dispel that myth, because it is a myth to my mind.

SENATOR LE SUEUR: It is a myth or, shall I say, a totally unacceptable risk. It could have been done, but the consequences, I suspect, would have been ----

SENATOR VIBERT: Pretty horrendous.

SENATOR LE SUEUR: They would have been pretty horrendous.

DEPUTY DUHAMEL: Mr Murphy?

MR MURPHY: I am afraid I am jumping back a question. I apologise.

SENATOR LE SUEUR: It is all right.

MR MURPHY: And that is with regard to the rate of tax.

SENATOR LE SUEUR: Income Tax or GST or?

MR MURPHY: No, the 10%.

SENATOR LE SUEUR: Right.

MR MURPHY: I suppose I also jump back to a very much earlier question about what happens if the estimates of the total tax take are wrong as well, because quite clearly that is an estimate?

SENATOR LE SUEUR: Yes.

MR MURPHY: I understand that and, as I frequently say to people when I give them an estimate, “I guarantee this is wrong”.

SENATOR LE SUEUR: Yes.

MR MURPHY: “However much you have paid me for it, I guarantee that it is wrong.” So it won’t be 80 million precisely, we know that; and it won’t be 100 million precisely, we know that. Therefore there is a risk in this strategy. It seems to me, just looking at this purely as a risk assessment, there is a substantial risk inside the policy that is being put forward, and those risks arise on several counts: (1) that there won’t be Government savings of £20 million; and (2) there won’t be growth, and there has been a pattern on my reading of Jersey’s statistics of non-growth

from 1999 onwards, which is partly confirmed by the submission Senator Walker has made to this Committee.

SENATOR LE SUEUR: Yes.

MR MURPHY: So those risks both exist, and that is £40 million worth of risk. Then there is a risk that the GST, which I know we are not discussing specifically this afternoon, may not raise as much as expected. So it seems a risk to go therefore straight from 20%, which certainly some of the companies who are going to be liable under the new régime to 10% and it seems to me just adding one further characteristic of risk into the whole balancing equation between 2008 and, as you say, around 2012, when the size of the hole will be known. It could be that, by 2012, the size of that hole could be very big. There has been a commitment given that GST will come in at 3%, I think, for the first three years.

SENATOR LE SUEUR: Yes.

MR MURPHY: So that variable has been removed from the equation as something that can rebalance it. Wouldn't it have been perhaps therefore prudent to say "Okay, we are looking at a change. 10% is going to be the going rate eventually", but wouldn't it have been wise to have moved towards it in stages from 2008 to, say, 2012 and bring the rate down towards 10% whilst that risk of other taxation revenues being lost was higher earlier on in the process to provide an extra cushion, so moving from 20% to 17½, to 15, to 12½, to 10, or something on the way through.

SENATOR LE SUEUR: Right. The short answer is no. Firstly, can I say that I am satisfied that our estimate of 80 to £100 million is robust, and I have no doubt that it will not be more than £100 million, and I would be pleasantly surprised if it was less than 80.

As far as risk is concerned, what you have, I think, is a situation where, if you move to a rate of 15% in the financial services sector for the next three or four years when everywhere else is charging 10, there is every incentive for one or two of those players to migrate from Jersey elsewhere and, where one goes, the danger is that the other follows. That is also a risk which we have to take into account and, yes, I accept that it is a balance of risks. To me, the risk of those businesses moving elsewhere, is a serious one which you shouldn't underestimate.

The second point I would make in answer is that businesses like certainty. Now, I know that in life there are two certainties, one begins with a D and the other begins with a T, but, in terms of taxes, they like certainty about a tax rate. I think to say to them “Well, it may be 15 this year, but, if all goes well, then it might be 12½ in a couple of years time and, if the sun shines, it will be 10 and, who knows, if there’s a heatwave, it might even be 7½”, that doesn’t inspire banking institutions to plan with any confidence and it doesn’t make for long term stability. I believe that we need to have a policy and stick by it so that we all know where we are. One of my aims in producing this Fiscal Strategy was to ensure that it did deliver, as far as possible, a measure of certainty for the foreseeable future. So, for all those reasons, whilst I accept that it does add another risk in one area, it also counterbalances in other areas, I go back to my fundamental point that I don’t think we need get so het up about the 80 to 100 million not being achieved in one way or the other.

As far as the 20 million of States’ savings is concerned, that, to a considerable extent, the States can impose on itself. It simply turns the tap and says: “Committees, sorry, there is no more money in the kitty. You carve up that much amongst you the way you want to”, and certainly local States members, Deputy Duhamel in particular and Deputy Hill, who attended workshops where we carved up that money in a semi-acrimonious sort of way, accept the fact that that can be achieved. So, one way or another, that £20 million saving can be achieved. That is within the States’ ability to achieve.

The £20 million from economic growth is not directly within the States’ ability to achieve. That depends on setting the right sort of economic climate and will also depend on factors outside the Island over which the States has no control. So I accept that there is a variable there that that 20 might be higher or lower. But whatever you set it, you have to set a realistic target and the target we have set of 2% real growth is one which is considered to be realistic. If at the end of the day that growth is higher or lower, we are still, I think, talking about degrees of magnitude here and, in the overall scheme of things, this is setting out a strategy for the future, which enables us to cope with a variety of scenarios without creating any nasty shocks. So it is probably a long answer perhaps to my initial comment of just saying no, I think

you are wrong.

DEPUTY DUHAMEL: That is fine. Any further items? Mr Murphy again?

MR MURPHY: My apologies. It is important and it is on this issue of risk and uncertainty.

SENATOR LE SUEUR: Yes.

MR MURPHY: But one of the things you have said this afternoon is that in practice, if I summarise you correctly (and I may not, but if I summarise you correctly), there is much more uncertainty about the structure which these laws are going to take than I thought. There appears to be a lot more work to do than I expected at this stage, but the thinking which I thought was pretty concrete in people before, if I'm honest, is actually much more fluid than I expected. That appears to be one of the overriding things that has come out of your comments.

Now, I am a UK based chartered accountant. I have a client base. If one of them was to ask me at this moment: "Is the situation in Jersey as stable as historically Jersey has always advertised", I would actually have slightly less confidence at this moment than I had at 2.30, because it appears to me that you are saying that there is a lot of groundwork to do and we don't know what the result of that groundwork is as yet. So my question is actually a relatively straightforward one, and that is how quickly is that work going to be done to provide certainty, because there is much more uncertainty than I thought there was?

SENATOR LE SUEUR: Right. I think, first of all, I don't agree that there is that much uncertainty. What we set out here is a high level framework, where we are going, the sort of principles we want to have -- a look-through or apportionment, a Goods and Services Tax -- and those, you can say, are givens. We are now talking about matters of detail, important detail in many cases, but they shouldn't, I think, be such to deter any client of yours or anybody else's from saying that Jersey doesn't know where it is going. It knows very much where it is going. It has got an agreed high level framework within which the details are being filled in.

Now, I think, were we to try to fill in all the details before we presented the Fiscal Strategy, that Strategy would have been delayed by another year or two. That, in my view, would have been totally unacceptable. It would also have meant a tremendous amount of detailed work going on without any clear indication that that was an appropriate top level

strategy to adopt. It is assumed that we would spend a year drafting a Goods and Services Tax Law in the minutest of detail and then States Members said: "Oh we don't like GST". All that work would have gone to waste, all that time would have gone to waste and we would have had to start again the following year, again, in the same situation of having a principle of "We don't want GST, we want a payroll tax" and we spend another year doing it that way. So I think it was inevitable that you had to achieve the high level objectives first, and that we have done and they are clearly set out in there.

In terms of the underlying details, I would like them to be ready by the end of next month, but the reality is that it will take a hell of a lot longer than that because there are a few problems. There are clearly issues which are going to affect different sectors of the community and different parts of the industry in different ways. We are going to have to involve people, because that is the nature of doing these things, in getting that information out and seeing what is the most appropriate way of going forward. So, on the one hand, I want to achieve it as soon as possible. On the other, I accept that there is a lot of spade work to be done in the detail. I think it was someone other than myself who commented on the proposition that the devil is in the detail. It always is and, until that detail is set out, clearly there are going to be areas of uncertainty. But I think it is relative. It is uncertainty within a pretty clearly set out framework, in my view.

I wouldn't want to overestimate the variances that there are going to be from this. We are not going to suddenly say: "Well, financial institutions won't include clearing banks." You are talking now really about detail and getting an appropriate law for Jersey or laws for Jersey in the most ridiculous of timescale. I mean, I am conscious of the fact that, between now and 2008, not only have the laws to be drafted, but there is a whole sort of culture of training, education and maybe new systems to implement. Really a lot of this law needs to be in place by the end of 2006 in order to have an adequate lead-in time to 2008. Now, I am not at this stage saying what the exact timescale will be, but I suppose, in broad terms, we have got 12 months to 18 months' work ahead of us on the detail.

SENATOR VIBERT:            Could I put in an analogy, in popular terms? You feel we have built a

very sound house, but you are now looking at furnishing it and decorating that house? In other words, you believe we have the firm structure in place, but on the actual detail of the inside there is still quite a lot of work to be done in deciding what's going to be in the kitchen and what's going to be in the bathroom etc?

SENATOR LE SUEUR: Yes, but that is an analogy. As long as we don't push the analogy too far ----

SENATOR VIBERT: No, no.

SENATOR LE SUEUR: ---- then that is probably about right.

SENATOR VIBERT: In broad terms I was thinking it was an analogy.

SENATOR LE SUEUR: Yes.

DEPUTY DUHAMEL: I am conscious of the time. I think initially, Senator, you said until four o'clock. There is another four minutes before your time expires, so to speak.

SENATOR LE SUEUR: Before the glue starts to melt ?.

SENATOR VIBERT: Not before you expire.

DEPUTY DUHAMEL: So I think there is possibly time for, say, one more round of questions on another issue perhaps, or if we have reached the end of our tether, then perhaps we would offer you the opportunity to say a few closing words, if you would like to, or perhaps Mr Black, if he has anything to add.

SENATOR LE SUEUR: I think all I would say is that there is a lot of work to do on the detail. What I would like to do and what I said to you and to the President of PPC is that I would like to involve Scrutiny in the development of that detail because I think all too often we start the Scrutiny process far too late down the line.

DEPUTY DUHAMEL: Hmm hmm.

SENATOR LE SUEUR: Now, we have got an opportunity here not necessarily to look at the whole lot because, I make no bones about it, the amount of legislation for GST, for anti-avoidance, look-through and so on is going to be fairly significant, but we can take one of those topics, whichever one appeals to the Scrutiny Panel, and work with us to try to work together to provide a reasonable framework for that to operate. I think, on that basis, we may get more

benefit out of the Scrutiny process than this retrospective situation we are in today.

DEPUTY DUHAMEL: I think you make a valuable point and, of course, you are aware that, seeing as you have enjoyed the process so much this afternoon, we will have to ask you back for the second half.

SENATOR LE SUEUR: One other thing I would say, which is a matter which we took up at a meeting at which you were present with Bob Hill a couple of weeks ago is that I think it would be helpful for the Scrutiny Committee to discuss with me and my Committee the framework of your report before it is published so we don't have the potential for acrimonious comments, if there are going to be any, in public. Let us try to agree where we can agree and agree where we have to disagree and then present a report which can work together as a critical friend to us and to the States.

DEPUTY DUHAMEL: Thank you. On that note, I thank you for your attendance and wish you well for the next.

SENATOR LE SUEUR: Right, thank you for your time.

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